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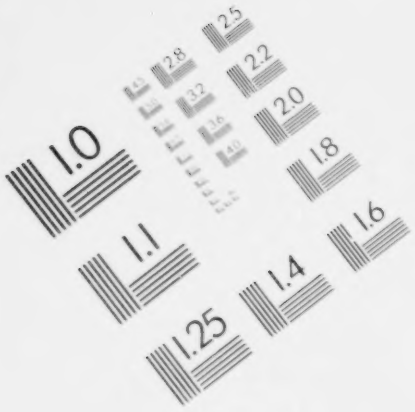

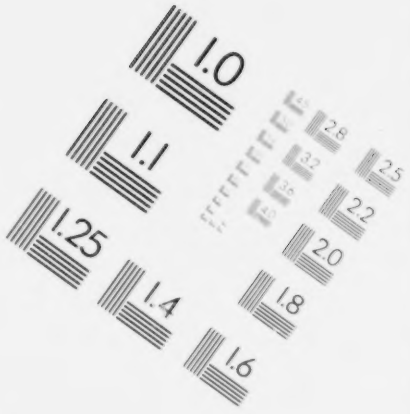

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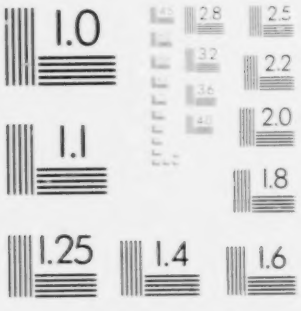

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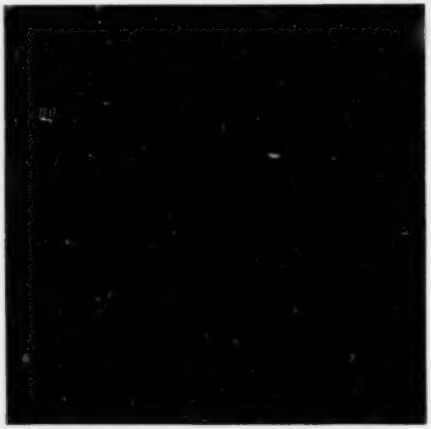

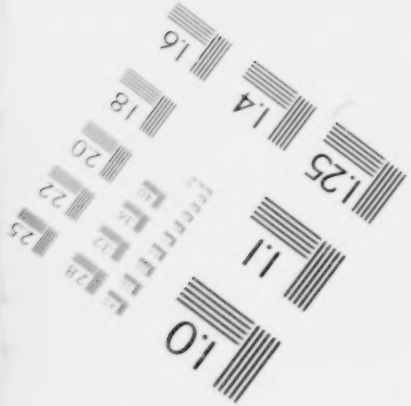

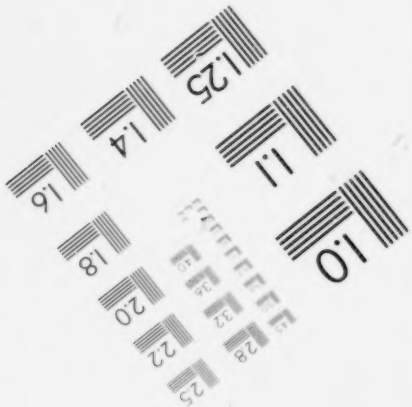

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fifty-first session
Item 12 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Adverse consequences of the transfer of arms and illicit trafficking in arms on the enjoyment of human rights

Note by the secretariat

1. In its resolution 1997/36, of 28 August 1997, the Sub-Commission on Prevention of Discrimination and Protection of Minorities authorized Ms. Clemencia Forero Ucros to prepare a working paper, in the context of human rights and humanitarian norms, assessing the utility, scope and structure of a study on weapons of mass destruction or with indiscriminate effect, or of a nature to cause superfluous injury or unnecessary suffering, for submission to the Sub-Commission at its fiftieth session.

2. In its decision 1998/111, of 26 August 1998, the Sub-Commission took note of the circumstances surrounding the inability of Ms. Clemencia Forero Ucros to submit her working paper and decided to request her to submit it to the Sub-Commission at its fifty-first session.

3. In a letter dated 27 May 1999, Ms. Forero informed the secretariat that, owing to other commitments, she would not be able to prepare the working paper for the fifty-first session of the Sub-Commission.

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7 June 1999

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COMMISSION ON HUMAN RIGHTS
Sub-Commission on Prevention of Discrimination
and Protection of Minorities
Fifty-first session
Item 12 (b) of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

REVIEW OF ISSUES NOT PREVIOUSLY THE SUBJECT OF STUDIES BUT WHICH THE SUB-COMMISSION HAS DECIDED TO EXAMINE

Terrorism and human rights

Preliminary report prepared by Ms. Kalliopi K. Koufa,
Special Rapporteur

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I. INTRODUCTION

A. Mandate and purpose

1. In its resolution 1996/20 of 29 August 1996, entitled "Human rights and terrorism", the Sub-Commission on Prevention of Discrimination and Protection of Minorities decided to entrust Ms. Kalliopi K. Koufa with the task of preparing a working paper on the question of terrorism and human rights, to be considered at its forty-ninth session. In response to this request Ms. Koufa submitted to the Sub-Commission a working paper (E/CN.4/Sub.2/1997/28) identifying the diverse issues and problems involved in the discussion of this question and containing a number of proposals for a study on terrorism and human rights.

2. At its forty-ninth session, the Sub-Commission examined this working paper and in its resolution 1997/39 of 28 August 1997 expressed its deep appreciation to Ms. Koufa for her analytical, very comprehensive and well-documented paper, recommended that the Commission on Human Rights authorize her appointment as Special Rapporteur to conduct a comprehensive study on terrorism and human rights on the basis of her working paper and requested her to submit a preliminary report at its fiftieth session, a progress report at its fifty-first session and a final report at its fifty-second session.

3. At its fifty-fourth session, the Commission on Human Rights, in its decision 1998/107 of 17 April 1998, approved the appointment of Ms. Koufa as Special Rapporteur and requested the Secretary-General to provide the Special Rapporteur with all the assistance necessary to enable her to accomplish her task. The Economic and Social Council, in its decision 1998/278 of 30 July 1998, endorsed decision 1998/107 of the Commission on Human Rights.

4. Owing to the insufficient time between the confirmation of her appointment by the Commission and the deadline for submitting Sub-Commission documents, the Special Rapporteur was unable to prepare a preliminary report for the fiftieth session of the Sub-Commission. However, she made an oral presentation at that session, in which she highlighted the essential elements of her study, discussed her ideas on the purpose, scope, sources and structure of her future report, and expressed her wish to elaborate on them further in the framework of a substantial preliminary report, to be submitted to the Sub-Commission at its fifty-first session. After expressing its interest in the study on human rights and terrorism and in the oral statement by the Special Rapporteur concerning the basis and the orientation of the study, the Sub-Commission adopted resolution 1998/29 on 26 August 1998, in which it requested the Special Rapporteur to submit her preliminary report at its fifty-first session.

5. The present preliminary report on the question of terrorism and human rights is prepared pursuant to paragraph 1 of Sub-Commission resolution 1998/29. Its purpose is to outline the main questions to be analysed in the study and thus provide a basis for discussion by the Sub-Commission at its fifty-first session. It is expected that this discussion will assist the Special Rapporteur in finalizing the framework of the study and delimiting the problem areas to be dealt with in the study.

Consequently, this preliminary report is to be understood as a sequel to the working paper (E/CN.4/Sub.2/1997/28) and as a set of hypotheses requiring further thought, elaboration and refinement.

B. Historical background

6. Before embarking upon the essential task of this preliminary report, reference should be made to the historical background of the present study. It may be well to recall also that attempts to study the problem of terrorism as a common danger to be confronted by international law were already made before the Second World War. 1/ However, since it would not be appropriate to try to review here the history of these attempts in order to draw from it valid conclusions for solving the problems with which the international community is confronted today with regard to human rights and terrorism, suffice it to note at this point that the pre-Second World War attempts culminated in the abortive Convention for the Prevention and Punishment of Terrorism, adopted under the auspices of the League of Nations on 16 November 1937. 2/

7. Following the Second World War, the United Nations made no attempt to revive this Convention. Nonetheless, the problem of terrorism has been the subject of a number of actions in the course of the work carried out by the United Nations on the codification and progressive development of international law, since the early 1950s, 3/ and on the maintenance of international peace and security, in the early 1970s. 4/ Moreover, faced with the alarming increase of terrorist acts interfering with civil aviation in the 1960s, the international effort turned to a piecemeal (i.e. crime by crime) rather than a comprehensive approach to the problem of controlling terrorism, starting with the adoption under the auspices of the International Civil Aviation Organization of a group of conventions relating to aviation safety. 5/

8. It was not until 1972, soon after the spectacular kidnapping and killing of 11 Israeli athletes during the Olympic Games at Munich, that the issue of terrorism became the epicentre of attention and contention in the General Assembly when, by a note dated 8 September 1972, the then Secretary-General Kurt Waldheim requested that the General Assembly include in the agenda of its twenty-seventh session an additional item of an important and urgent character, entitled "Measures to prevent terrorism and other forms of violence which endanger or take innocent human lives or jeopardize fundamental freedoms". 6/

9. On 20 September 1972, the Secretary-General stated in support of his request that, while fully aware of the immense complexity of the problem of terrorism and violence and of the difficulties that a number of Governments would have in formulating their approach to the problem, he had nevertheless proposed the item because there was a deep and general concern with the phenomenon of international terrorism, because the scope of terrorist activity as well as its underlying causes had become increasingly international and because modern technology had added a formidable new dimension to this ancient problem. The Secretary-General felt strongly that the United Nations should face up to the international aspects of terrorism, for there was also the risk of a steady erosion, through indiscriminate violence, of the already tenuous

structure of international law, order and behaviour, in which innocent people, often completely unconnected with the issues involved, would increasingly fall victims. In his opinion, it was no good to consider the very complex phenomenon of terrorism without at the same time considering the underlying situations which gave rise to it. The roots of terrorism in many cases lay in misery, frustration, grievance and despair so deep that men were prepared to sacrifice human lives, including their own, in the attempt to effect radical changes. The Secretary-General made it clear that it was not his intention, in proposing the item, to affect principles enunciated by the General Assembly regarding colonial and dependent peoples seeking independence and liberation. 7/

10. On 23 September 1972, the General Assembly decided to include the item on its agenda, under the amended title "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes" and allocated it to the Sixth (Legal) Committee for consideration. Pursuant to a decision by the Sixth Committee requesting that the Secretariat submit to it "a thorough study on the problem of terrorism, including its origins", 8/ the Secretariat prepared a study, 9/ referring to a number of problems which will be dealt with in appropriate parts of the present study.

11. As a result of the work of the Sixth Committee, the General Assembly adopted resolution 3034 (XXVII) of 18 December 1972, providing for the setting up of an ad hoc committee, consisting of 35 members, to study the issues relating to international terrorism and to report to it. The Ad Hoc Committee on International Terrorism, which met in 1973, 1977 and 1979, examined the problem of international terrorism under three main parts - the definition, the underlying causes and the measures to be taken to combat international terrorism - and reported to the General Assembly at its twenty-eighth, thirty-second and thirty-fourth sessions. 10/ The reports of the Ad Hoc Committee clearly demonstrate how far apart the Member States were on practically all aspects of the issues examined. 11/

12. Nonetheless, in the period between 1972 and 1998, despite debates at cross purposes and persisting differences of opinion, the General Assembly managed to develop a pioneering role in the global struggle against terrorism, by adopting 4 (of the existing 12) international conventions that address crimes associated with terrorism, 12/ two declarations on measures to eliminate international terrorism 13/ and a significant body of resolutions addressing terrorism. 14/

13. The resolutions of the General Assembly addressing terrorism clearly reflect, on the one hand, an increasing resolve within the international community to condemn all acts, methods and practices of terrorism wherever and by whomever committed and, on the other hand, a growing international awareness of the existing relationship between human rights and terrorism. In this context, it is important to recall that the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights, has substantiated the danger posed by terrorism not only to the life and dignity

of the individual but also to the very concepts of human rights, fundamental freedoms and democracy that underlie the creation of the United Nations, by affirming that "[t]he acts, methods and practices of terrorism in all its forms and manifestations as well as linkage in some countries to drug trafficking are activities aimed at the destruction of human rights, fundamental freedoms and democracy, threatening territorial integrity, security of States and destabilizing legitimately constituted Governments", 15/ and by prompting the international community to take the necessary steps to prevent and combat terrorism. 16/

14. As a result of this evolution in approach and of the broadening of interest on the part of the General Assembly in the human rights dimension of terrorism, it was hardly surprising that the Commission on Human Rights and the Sub-Commission on Prevention of Discrimination and Protection of Minorities should follow suit by adopting a series of resolutions on "Human rights and terrorism". 17/ As reflected in these resolutions, the Commission has, since 1994, entertained the idea of entrusting the Sub-Commission with the task of preparing a study on the question of terrorism and human rights, 18/ evidence proving beyond any doubt the concern of these two human rights bodies to clarify conceptually, morally and legally the neglected human rights aspects and effects of terrorism.

15. The resolutions mentioned in the preceding paragraphs refer to a number of problems relating to the human rights aspects of terrorism. The working paper on terrorism and human rights, submitted by the Special Rapporteur (E/CN.4/Sub.2/1997/28), as well as the ensuing discussions by the Sub-Commission at its forty-ninth and fiftieth sessions, highlight the central issues relevant to the understanding of the human rights dimension of terrorism and contain a number of ideas as to the scope and content of the present study. Since the purpose of this preliminary report is to present a tentative framework for the study, to identify possible priorities and to indicate the methods to be used, it is now necessary to proceed by considering briefly certain conceptual and other relevant questions that are basic to the subject-matter of terrorism and human rights.

II. SOME CONCEPTUAL AND OTHER FUNDAMENTAL QUESTIONS THAT ARE RELEVANT TO THE STUDY

A. The link between terrorism and human rights in fact and law

16. Little, if any, attention has been given to the link between terrorism and human rights. Although some of the more obvious effects of terrorism on human rights have been documented in numerous resolutions of the General Assembly, 19/ the inextricable link between terrorism and human rights and its broader international implications were largely ignored before the 1993 Vienna World Conference on Human Rights.

17. This delay is interesting and merits further discussion inasmuch as it is due to the traditional view that human rights concern only a Government and its subjects, for human rights are both the responsibility and the privilege of the Government. This traditional view has a profound conceptual basis and an important bearing on the nature and content of the link between terrorism and human rights and will, therefore, have to be looked into in the course of

the study. As will be seen later, it also involves the question of the scope of application of human rights law (see below, paras. 44-46) and, in particular, the question already raised in the working paper of whether human rights law is actually moving beyond the traditional dichotomy of individual versus State and towards the creation of obligations applicable also to non-State entities. 20/

18. The question here is rather to illuminate and elaborate on the reality of the link between terrorism and human rights, which for a long time the United Nations has not been so ready to recognize, as a result of deep ideological divisions in the attitudes of Member States concerning the issue of terrorism and its implications for the full enjoyment of human rights and fundamental freedoms. This approach involves consideration of three major, relatively distinct areas, in which terrorism puts under threat those social and political values that relate, either directly or indirectly, to the full enjoyment of human rights and fundamental freedoms, namely the areas of:

1. The life, liberty and dignity of the individual;

2. Democratic society; and

3. Social peace and public order.

19. These three areas are very important and relevant to the present study. It is, therefore, proposed that at subsequent stages of preparation of the study the analysis to be made include all three of them, in their theoretical as well as practical dimensions. In the present preliminary report, however, only a few remarks will need to be made with regard to their immediate relevance in this context.

1. The life, liberty and dignity of the individual

20. Articles 3 and 5 of the Universal Declaration of Human Rights 21/ respectively state that "[e]veryone has the right to life, liberty and security of person" and that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". The International Covenant on Civil and Political Rights 22/ uses similar language in its article 6, paragraph 1, and article 7, aiming at the protection of the supreme right to life as well as the dignity and the physical and mental integrity of the individual, from which no derogation is allowed even in situations of public emergency. 23/ Thus, article 6, paragraph 1, and article 7 respectively provide that "[e]very human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his life" and that "[n]o one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment".

21. While there is no doubt that both the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights envisage positive or negative obligations of States, and that the procedures for the implementation of the International Covenant on Civil and Political Rights envisage actions only against States, it is obvious that groups or persons can also act in violation of human rights and freedoms enumerated therein of other persons, 24/ especially the human rights and freedoms that concern the life,

liberty and dignity of the individual. This is particularly true in the case of terrorism, for terrorism not only disregards human life and human dignity but actually leads to the death and injury of innocent people.

22. In this connection, it is appropriate to recall yet another provision of both International Covenants on Human Rights, namely common article 5, paragraph 1, which - using almost identical language to that of article 30 of the Universal Declaration - stipulates that "[n]othing in the present Covenant may be interpreted as implying for any State, group or person any right to engage in any activity or perform any act aimed at the destruction of any of the rights and freedoms recognized herein or at their limitation to a greater extent than is provided for in the present Covenant".

23. Now this provision, which clearly applies not only to States but also to groups and individuals, forbids the abuse of human rights. 25/ It forbids the misuse and exploitation of the International Covenants as a pretext for violating human rights and is, therefore, very pertinent to the discussion of the issue of terrorism and human rights. For it is a well-known fact that the destruction or limitation of human rights and freedoms recognized in the International Covenants - and in the Universal Declaration - through unacceptable acts and abuses justified in terms of human rights, is a practice which is very often resorted to by terrorists, be they individuals, groups or Governments.

24. Indeed, as indicated in the working paper, 26/ terrorist acts and methods not only violate the rights of their victims but, at the same time, provoke or give an excuse for serious breaches of human rights and freedoms by overreacting State authorities that feel threatened by terrorism. Furthermore, it should be borne in mind that terrorists anticipate, and often aim to provoke the State authorities into, the kind of suppressive reaction and response that will eventually involve them in a spiral of terrorist abuse and violations of human rights, in order to create fear and dissatisfaction among the general public. Hence, the intractable problems and legal dilemmas posed by the human rights notions and pretexts invoked by the opposing sides engaged in this vicious circle of controversial aims and doubtful means.

25. Thus, it is clear that there is a close link between terrorism and the enjoyment of human rights and freedoms. This link is seen directly when groups or individuals resort to acts of terrorism and, in so doing, kill or injure individuals, deprive them of their freedom, destroy their property, or use threats and intimidation to sow fear. The link can be seen indirectly when a State's response to terrorism leads to the adoption of policies and practices that exceed the bounds of what is permissible under international law and result in human rights violations, such as extrajudicial executions, torture, unfair trials and other acts of unlawful repression, that violate the human rights not only of the terrorists but of innocent civilians. There seems to be widespread agreement on both the direct and indirect link between terrorism and respect for human rights. Moreover, the devastating effects of terrorism on the life, liberty and dignity of the individual have been clearly expressed and documented in the debates and the related pronouncements on terrorism of the competent organs and bodies of the United Nations, 27/ as well as of the regional intergovernmental organizations. 28/

2. Democratic society

26. The preceding observations point already to the second area, that of democratic society, which is threatened by terrorism. The words "democratic society" are among the most used and abused of the political vocabulary. While they may mean different things to different people, 29/ depending on their philosophical, ideological, political, cultural, social and economic perspectives, all agree that the expression "a democratic society" referred to in the Universal Declaration and in both International Covenants 30/ is a vital concept for human rights based on common values shared by human beings throughout the world community.

27. Indeed, article 29, paragraph 2, of the Universal Declaration, articles 4 and 8, paragraph 1 (a), of the International Covenant on Economic, Social and Cultural Rights, and articles 14, paragraph 1, 21 and 22, paragraph 2, of the International Covenant on Civil and Political Rights refer to the concept of democratic society in order to authorize restrictions on the rights and freedoms of the individual. 31/ Work already undertaken within the United Nations on this subject 32/ relates this concept to the freedoms of the individual and their necessary limitation within the framework of organized society in order to achieve the essential balance and harmony between the individual and the community. The fundamental reasoning here, of course, is that rights and freedoms have first to exist in order to permit of their restriction or limitation; furthermore, that the reasons which may justify their restriction or limitation must be basic values "in a democratic society", the degree of democracy in society being tested by the extent of participation in the decision-making processes, the extent of popular control of governmental decisions and the extent of the experience by ordinary citizens of ruling and being ruled. 33/

28. In the words of the Vienna Declaration and Programme of Action, adopted by the 1993 World Conference on Human Rights, which undoubtedly have marked the evolution and current status as well as the new trends and visions of the international community, as represented in the United Nations, in the field of human rights: "Democracy is based on the freely expressed will of the people to determine their own political, economic, social and cultural systems and their full participation in all aspects of their lives". 34/ The then Secretary-General, Boutros Boutros-Ghali, in his opening statement, in which, inter alia, he linked democracy with the guarantee of human rights and with the "reconcil[iation of] individual rights and collective rights, the rights of peoples and the rights of persons", spelled out "forcefully, that democracy is the private domain of no one. It can and ought to be assimilated by all cultures. It can take many forms in order to accommodate local realities more effectively. Democracy is not a model to copy from certain States, but a goal to be achieved by all peoples! It is the political expression of our common heritage ... like human rights, democracy has a universal dimension". 35/

29. Proceeding from these ideas, it is assumed that a democratic society requires the existence and free exercise of certain basic individual and group rights and freedoms, which the Universal Declaration and the International Covenants - not to mention at this juncture other international, regional and national human rights instruments, norms and standards - define and thereby indicate their limits. These basic rights and freedoms are inter alia:

liberty and security of person, equality and non-discrimination, due process of law, freedom of opinion and expression, freedom of assembly and association, judicial access and review.

30. A democratic society, moreover, whatever may be the cultural, political, social and economic framework in which it is achieved, is identified by certain principles and institutions, such as pluralism, the rule of law, legitimacy, political equality, popular control and public accountability of government, which, again, have their starting point in human rights and freedoms. It follows that the concept of democratic society is inseparable from fundamental human rights and freedoms, and from respect for the rights and freedoms of others. In any event, there seems to be ample consensus that a democratic society is characterized by differences of opinion, considerable freedom, and tolerance of diversity of cultures and identities subject to the law and the principle of equality and non-discrimination.

31. It will be apparent from the foregoing that terrorism is totally at odds with the concept of democratic society. Terrorist acts and methods utilized to coerce others from a free choice and full participation in the political process offend democratic society. As aptly stated by United Nations Secretary-General Boutros Boutros-Ghali in his message to the 1996 preparatory meeting for the Cairo International Symposium on Terrorism: "Terrorists threaten the very foundation of civilized life. By seeking to achieve their aims through violence, they reveal their unwillingness to subject their views to the test of a fair political process". 16/

32. In fact, terrorism can threaten democratic society in various ways. By using violence and fear as a political tool, terrorism can undermine the legitimate authority of Governments; influence ideological and political factors in order to impose its own model of society; impede citizens in their use of their rights to have a say in the decisions that affect their lives; subvert pluralism and democratic institutions through the creation of negative conditions for the functioning of the constitution; halt the democratic process and democratization; undermine free political, economic, social and cultural development; impair the quality of democratic society for all, even when it does not actually threaten its survival; lead to more terrorism and militancy; and so on. In this context, it should be recalled that the threats posed by terrorism to democratic society have already found their expression in a number of authoritative pronouncements by the organs and competent human rights bodies of the United Nations 17/ and the regional intergovernmental organizations, including the Declaration and Programme of Action of the 1993 Vienna World Conference on Human Rights. 18/

3. Social peace and public order

33. Lastly, there is the area of social peace and public order, where the effects of terrorism can also be devastating. Terrorist acts and methods involving impermissible violence and fear, whether engaged in by private individuals or in the name of the official State, will inevitably create social and political disorder and affect stability and peace. In this connection, it is appropriate to consider the actual and potential threat to stability, peace and order posed by terrorism in both its national and international dimensions.

34. To begin with the national dimension, the actual and potential threat to stability, peace and order posed by terrorism will be easily deduced from what has already been developed in the preceding sections. Terrorist outrages aiming at the destruction of human rights in order to create fear and provoke conditions that are propitious to the destruction of the prevailing social order may destabilize Governments. 39/

35. Indeed, killing innocent people, destroying property and fostering an atmosphere of alarm and terror amount not merely to a violation of the rights of the direct victims but to a solicitation of further serious breaches of human rights. In response to the terrorists' despicable conduct and the threats posed to society, the authorities of the State which is responsible for bringing the terrorist violence to an end are entitled to adopt counter-terrorist measures and may not be constrained by the normal limits of official measures for the prevention of ordinary crime. As a consequence, there is a real danger that the State will overreact to the threat of terrorism and slide towards repression and violation of the human rights not only of the terrorists but of the rest of society whose rights and liberties might be diminished in the course of discovering, apprehending and convicting the terrorists. The damaging impact and effects of terrorism on social peace and public order may, in the long run, threaten the very existence of the State.

36. This is particularly true in cases where terrorist activity becomes strongly linked to illicit trafficking in narcotic drugs, arms traffic, political assassinations and other international organized criminal activity, 40/ or in cases where terrorism takes the form of violent insurgent activity - devoted to the violent overthrow of authority - that succeeds in creating a crisis which overshadows public order and destabilizes the Government. In such cases, which are likely to have international repercussions, the potential danger posed by terrorism to regional and international stability, peace and order also becomes very clear.

37. In fact, as the Special Rapporteur pointed out in her working paper, terrorism is an international as well as a domestic phenomenon. In this age of increasing internationalization and interdependence, the national and international dimensions of terrorism are but two facets of the same dangerous social phenomenon which infringes upon the interests of all States, not only as an assault against their public order and the institutions that protect the life, liberty, dignity and security of their citizens but, at the same time, as a serious danger to peaceful international relations and cooperation, 41/ which in our day is clearly understood as encompassing human rights and values, as well as the principle of equal rights and self-determination of peoples.

38. It is no wonder, then, that the General Assembly, in the Declaration on Principles of International Law concerning Friendly Relations and Cooperation among States in accordance with the Charter of the United Nations, approved in its resolution 2625 (XXV) of 24 October 1970, expressed its opposition to terrorism in the following terms:

> "Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts

> in another State or acquiescing in organized activities within its territory directed towards the commission of such acts ... no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State."

39. These widely recognized prescriptions are characteristic of the general awareness within the international community of the increased role of terrorism as a catalyst for wider conflict. The involvement of States in mounting long-range terrorist activity may not only put at risk the constitutional order, the territorial integrity and the security of targeted States but may also have profound effects on regional and international balances, and jeopardize friendly relations and international peace and order. International terrorism, then, evinces similar characteristics to those of terrorist acts and methods in the domestic context: arbitrariness, indiscriminateness in effects, non-recognition of any rules or conventions of war, inhumanity and barbaric cruelty.

B. The question of defining terrorism

40. Once the connection between human rights and terrorism is established, the Special Rapporteur would proceed further to identify other controversial questions that are deserving of study and analysis. Further, given that the Special Rapporteur has been asked to examine the human rights aspects of terrorism, it will be important for the purposes of the study to focus also on issues which are relevant to the study and which have not been fully dealt with elsewhere in the United Nations system.

41. At the outset, there are issues of definition and terminology that need to be clarified. For example, what is an act of terrorism? Who can be identified and labelled as engaging in the exercise of terrorism? Governments? State and sub-State actors? Non-State groups and individuals? In modern international relations, there is a growing concern that States are using terrorism in inter-State conflicts. On the other hand, particular crimes, including crimes that are the subject of international treaties for their suppression and punishment, such as hijacking and kidnapping, are commonly referred to as "acts of terrorism", as are bombings aimed at civilians. International humanitarian law includes specific prohibitions against the use of terror or terrorism, but does not provide a clear definition of all such acts. i2/ Furthermore, the terms "terror" and "terrorism" are not referred to at all in human rights treaties.

42. As indicated in the working paper, the international community has not yet arrived at a comprehensive, universally accepted, definition of "terrorism". i3/ In the course of the study, the Special Rapporteur may have to explore some working definitions, in order to delimit the subject matter with greater precision and, in particular, with a view to identifying its major aspects and its possible relationship to the question of accountability. In this context, it is valuable to recall that the Rome Statute of the International Criminal Court, adopted on 17 July 1998, ii/ contains a number of provisions on genocide, war crimes and crimes against humanity that prohibit the commission of certain acts that in essence form part of a

terrorist campaign. There are also provisions in global and regional instruments in international human rights law, international humanitarian law and international criminal law which, to varying degrees, relate to terrorist acts. These sources, as well as jurisprudence arising from the pronouncements of the International Court of Justice and other international and regional courts and tribunals, may also provide some guidance on the definitional components of terrorism at the international level, and will, therefore, be examined in a next phase of this study.

41. As a consequence, although finding an all-encompassing and generally acceptable definition of "terrorism" is too ambitious an aim, the Special Rapporteur considers that it may be valuable in future reports to try to elaborate with some precision on the specific acts that can be considered as "acts of terrorism" for the purposes of the study. In doing so, attention must also be given to the actors or perpetrators of terrorism, whether they are States or non-State entities.

C. The interrelated questions of the scope of application of international human rights law and of the accountability of the non-State actor

44. It must be acknowledged that the Special Rapporteur has been entrusted with a controversial mandate, and that some States which are members of the Commission on Human Rights did not vote in favour of this study. Looking to the reasons why a number of States seem to be uncomfortable with the study helps, however, to identify more accurately the controversial issues that are in need of objective analysis. Pivotal among them are the issues of the scope of application of international human rights law and of the accountability of the non-State actor. These issues are also relevant to the question of defining terrorism and of assessing who may be a perpetrator of terrorist acts. In fact, a consideration of the debates on human rights and terrorism shows, more specifically, that there is a basic disagreement on the following two key and interrelated questions.

45. First, there is the question of whether certain acts committed by terrorists, or members of armed groups acting outside the State's control, are properly characterized as human rights violations. No State seems to be in doubt that terrorist acts are deserving of condemnation and that the perpetrators of terrorism need to be punished. However, a number of States do question whether this can or should be accomplished through the application of international human rights law. 45/ This question is a complex one. It raises issues concerning the scope of application not only of the main United Nations human rights treaties, but also of international humanitarian law. It also involves questions concerning individual criminal responsibility under international law for crimes such as genocide, war crimes and crimes against humanity. The Special Rapporteur intends to take account of the new developments in all these different areas of law, including those brought about by the adoption of the Rome Statute of the International Criminal Court, in a subsequent stage of the study.

46. Related to this question of accountability under human rights law is a second controversial question, namely, whether acts of terrorism perpetrated by non-State groups are properly the subject of scrutiny and condemnation by

United Nations human rights bodies. 46/ There is no doubt that a main impetus for the creation of the Special Rapporteur's mandate has been the perception by some States that the United Nations human rights programme lacks balance as it fails to address consistently abuses perpetrated by terrorist groups. In particular, some States which face terrorist activity, and whose own counter-terrorism activities might be criticized by United Nations human rights bodies, may take the view that this perceived lack of balance paints a false picture of the human rights situation in the country. Of course, dealing with this question will require a consideration of the extent to which this perception is accurate. This in turn might require some survey of the degree to which existing United Nations human rights mechanisms do deal with terrorist acts and whether it is appropriate to ensure that these mechanisms follow this issue more closely in the future. 47/

D. Recent trends in international terrorism

47. It is essential that the more ominous characteristics of contemporary terrorism should also solicit the attention of the Special Rapporteur. At the dawn of the new millennium, new forms of terrorist threat and assault that are harder to distinguish from other criminal activity seem to point to a new era of indiscriminate violence, more dangerous and deadly than in the past. In order for the study to proceed on some empirical basis, it will also be helpful, as indicated in the working paper, to highlight some recent trends in international terrorism and provide some survey of the scope and nature of contemporary terrorism. 48/ For example, what are the new types, if any, of terrorist acts which are said to violate human rights, and how and where do they occur? What, if any, are the new kinds or breeds of terrorists? Of course, it will be difficult to provide an accurate and comprehensive survey, but we do need some sense of the scope of the problem. This survey might be based on material submitted by States and intergovernmental and non-governmental organizations, as well as further research in the framework of the competent organs and bodies of the United Nations system.

48. Admittedly, terrorism in our day is undergoing all kinds of mutations. 49/ New adversaries, new motivations and new rationales which have emerged in recent years can couple with today's increased opportunities and capabilities to launch terrorism on a trajectory towards higher levels of lethality, mass destruction and mass killing, and to challenge the conventional knowledge about it. 50/ Certain recent trends in terrorist activities highlight not only the increased potential deadliness of terrorism, but also the increased role non-State actors may play in future as perpetrators. These developments concern primarily the spread of nuclear, biological and chemical weapons, as well as the proliferation of small calibre weapons. They further concern the growth of a variety of terrorist groups and organizations with diversified motivations, funding mechanisms and strategies, and the great dispersion of power existing now at the transnational level.

49. Indeed, nobody can remain unaware of the proliferation and availability of increasingly sophisticated weaponry and weapons of mass destruction, and of the disquieting possibilities and consequences their possession by terrorists can have. In the first place, with regard to nuclear weapons, the danger of fissile material falling into the hands of terrorist elements has risen dramatically with the fall of the former Soviet Union and the putative illicit

market in nuclear materials that is reportedly surfacing in Eastern and Central Europe. 51/ According to a recent report of the Director General of the International Atomic Energy Agency, the number of incidents of theft and illicit trafficking involving the unauthorized movement of both nuclear material and other radioactive sources, i.e. material which could contribute to the production of a nuclear weapon as well as material that can pose health hazards but cannot be used in the development of a nuclear weapon, has been rising. 52/

50. In the second place, terrorist access to biological and chemical weapons, such as anthrax, ricin or sarin is easier than access to nuclear materials. Biological agents and man-made chemical compounds which attack the nervous system, skin or blood and which can kill or harm humans, animals or plants over a large area and result in a simultaneous and widespread outbreak of disease, depending on the kind of pathogen or toxic spread, 53/ can now be produced by graduate students or laboratory technicians, and general recipes are available on the Internet. 54/ The relative ease and low cost with which these weapons can be produced or acquired has therefore raised the risk of increasing recourse to them by sophisticated terrorists. In fact, the spread of sarin nerve gas on the Tokyo subway on 20 March 1995, killing 12 and injuring some 5,700 people, dramatically demonstrated the potential magnitude of the threat posed by terrorists armed with weapons of mass destruction. 55/

51. Also relevant to the discussion of recent trends in terrorism affecting the enjoyment of human rights and freedoms is, in the third place, the rapid proliferation of small calibre weapons and the illicit trade in small arms. 56/ While the rapid and widespread proliferation and increasing deadliness of small calibre weapons strengthen the position of criminal organizations which resort to terrorist acts and methods, the close relationship between the illicit trade in small arms and terrorism, drug trafficking, money laundering and other transnational crime has been recently underlined also in a number of General Assembly resolutions which do not focus specifically on terrorism. 57/

52. Indeed, with the increasing globalization of the world economy, terrorists have managed to expand their activities, to establish networks of alliances with transnational criminal organizations and to hinder law and order, particularly in a number of developing countries where criminal law enforcement may be susceptible to pressure and bribery from powerful drug barons. According to an expert on terrorism:

> "The cultivation, processing, transport and distribution of narcotics is probably the greatest single generator of political violence and crime in the world. Its profits are used to finance and arm rural guerrillas, urban terrorists and criminal gangs; also to facilitate the trade by intimidation and corruption and by keeping the army and police away". 58/

53. Thus, another trend of serious concern is the combination of terrorism and drug trafficking and its corrosive effect on the integrity of State institutions, especially in those countries in which coca and heroin growing has fallen into the hands of powerful cartels. In fact, in those cases where police officers, judges, politicians, customs officials and others responsible

for law and order find the combination of threats and bribes irresistible, or where standing up for the rule of law may risk exposing oneself or family members to kidnapping, assault and murder by organized terrorist gangs, the combination of terrorism and large-scale trafficking in illicit drugs forms yet another lethal assault weapon against human rights and the rule of law.

54. Finally, academics and experts are currently emphasizing the recent rise and proliferation of religious- or quasi-religious-inspired terrorist organizational entities, 59/ as well as the vulnerability of civil society to the destructive power of cyber-terrorism. 60/

III. CONCLUDING OBSERVATIONS

55. The issues and trends in terrorism discussed above demonstrate the actual and potential threat that the various agents of terrorism pose to human rights and freedoms, to democratic society and public order. They further magnify the rise of non-State terrorist entities with transnational reach, their potential role in challenging the ability of States to protect the rule of law and the rights of their citizens, and in threatening international peace and security.

56. While the direct relevance of international and human rights law to human rights violations resulting from State or State-sponsored terrorist activity cannot be doubted, the relevance and adequacy of international and human rights law with regard to terrorist activities of non-State actors is questionable. For non-State actors are not, strictly speaking, legally bound by the supervisory mechanisms of international and human rights law. As a consequence, in these days when transnational terrorism is making full use of the gaps in legal systems, international concern about the grave human rights abuses being committed by non-State terrorist actors is, indeed, growing.

57. As already indicated by the Special Rapporteur in her working paper and in the present preliminary report, the question of the legal accountability of non-State actors involved in the violation of human rights through acts of terrorism is a vital one. It should, therefore, be discussed further at an appropriate stage of the study, with a view also to contributing towards a more balanced approach to the major divergences of opinion regarding the proper standard of accountability, taking into account new developments in international and human rights law.

58. In the present preliminary report, other pertinent trends and issues mentioned in the working paper, such as, for example, the increasing incidence in the post-cold war era of terrorist campaigns perpetrated by or against particular minority groups or elements of the population in the framework of ethnic or nationalist/separatist conflict, or the continuing controversy about wars of national liberation and the motives advanced to justify violence in the context of the efforts of peoples to realize the right to self-determination, have not been discussed. It is clear, however, that these questions should be addressed at subsequent stages of the study, in connection with the analysis and further elaboration of other interrelated issues referred to in the present preliminary report.

59. The next phase of preparation of the study on terrorism and human rights will be devoted to analytical work on the main problems referred to in this preliminary report. The primary sources of information will be: relevant international conventions, resolutions, studies, reports and other documents prepared within the United Nations system as well as by the regional intergovernmental organizations; relevant specialized literature; and relevant information provided by governmental and non-governmental organizations. A further source of information will be the replies by States on the implications of terrorism, as well as on the effects of the fight against terrorism, on the full enjoyment of human rights, collected by the Secretary-General from all relevant sources, including Governments, specialized agencies, intergovernmental and non-governmental organizations and academic institutions, in accordance with Commission resolution 1999/27 of 26 April 1999, and made available to the Special Rapporteur also for consideration. The members of the Sub-Commission are invited to make their suggestions to the Special Rapporteur regarding the sources of information.

60. An additional method that might be used at subsequent stages could be to attempt to collect information on and to study particular examples of the impact of terrorism on the full enjoyment of human rights in different States, particularly those States that are experiencing problems in the fight against terrorism. The Special Rapporteur is ready to consult with Governments that so wish in order to present their experience in subsequent reports on terrorism and human rights.

61. The Special Rapporteur considers that, in the light of the multidimensional character of the issues concerning the relationship between human rights and terrorism, and given that terrorism is a particular form of criminality, it would be valuable to coordinate with the United Nations Commission on Crime Prevention and Criminal Justice and the Centre for International Crime Prevention of the Office for Drug Control and Crime Prevention, based in Vienna, which is the focal point for the integrated efforts of the United Nations in drug control, crime prevention and combating international terrorism, in order to reduce possible overlap and better harmonize the Special Rapporteur's work with efforts and developments on related issues.

62. Moreover, the Special Rapporteur believes it is important to liaise and coordinate with special rapporteurs, representatives, experts and chairpersons of working groups of the special procedures of the Commission on Human Rights and of the advisory services programme, whose mandates touch on the topic of human rights and terrorism. To this end, the Special Rapporteur would appreciate being given the opportunity to participate in their annual gathering in Geneva, in order also to receive and benefit from their insights.

63. Finally, the Special Rapporteur is conscious of the importance of and the need for gathering further information and carrying out further research in order to be able to elaborate further the subjects covered in this preliminary report. To this effect, it would be particularly useful if the Sub-Commission would consider authorizing the Special Rapporteur to visit Geneva, New York and Vienna, with a view to holding consultations with the competent services and bodies of the United Nations system, complementing her research and collecting all the essential and up-to-date information

and data required for the preparation of the final report. In all these efforts, the Special Rapporteur would, of course, rely on the Office of the High Commissioner for Human Rights to support her work with all the assistance required.

64. With the present study, the Sub-Commission has the opportunity to contribute to filling yet another void in existing international human rights law in an area of burning, contemporary significance and practical under-response. It is the hope of the Special Rapporteur that she will be enabled to proceed with vigour, taking into account the new trends and developments that pertain to the substance of the questions and issues contained in the present report.

Notes

1/ For an account of these attempts, see the study prepared by the United Nations Secretariat for the Sixth Committee, under the title "Measures to prevent international terrorism which endangers or takes innocent human lives or jeopardizes fundamental freedoms, and study of the underlying causes of those forms of terrorism and acts of violence which lie in misery, frustration, grievance and despair and which cause some people to sacrifice human lives, including their own, in an attempt to effect radical changes" (A/C.6/418 of 2 November 1972, para. 22 ff). See also notes 8 and 9 below and accompanying text.

2/ See LN Doc. C.546(I).M.383(I).1937.V; and see also LN Doc. C.547(I).M.384(I).1937.V, for the accompanying Convention on the Establishment of an International Criminal Court.

3/ See Yearbook of the International Law Commission, 1951, vol. II, chap. IV and 1954, vol. II, chap. III.

4/ See General Assembly resolution 2625 (XXV) of 24 October 1970 on the Declaration on Principles of International Law concerning Friendly Relations and Co-operation among States in accordance with the Charter of the United Nations, addressing terrorism under the principle that States should refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any State, or in any other manner inconsistent with the purposes of the United Nations ("Every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State or acquiescing in organized activities within its territory directed towards the commission of such acts, when the acts referred to ... involve a threat or use of force"); and under the principle concerning the duty not to intervene in matters within the domestic jurisdiction of any state, in accordance with the Charter ("... no State shall organize, assist, foment, finance, incite or tolerate subversive, terrorist or armed activities directed towards the violent overthrow of the regime of another State, or interfere in civil strife in another State"). See also General Assembly resolution 2734 (XXV) of 16 December 1970, on the Declaration on the Strengthening of International Security, which "[s]olemnly reaffirms ... that every State has the duty to refrain from organizing, instigating, assisting or participating in acts of civil strife or terrorist acts in another State".

5/ See Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970; and Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971. The Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation was signed at Montreal on 24 February 1988. For other international conventions dealing with other crimes associated with terrorism, see note 12 below and accompanying text.

6/ See A/8791 of 8 September 1972.

7/ See generally, Yearbook of the United Nations, 1972, vol. 26, pp. 639-640.

8/ See A/C.6/414 of 27 September 1972.

9/ See A/C.6/418 of 2 November 1972.

10/ See the Reports of the Ad Hoc Committee on International Terrorism, Official Records of the General Assembly, Twenty-Eighth Session, Supplement No. 28 (A/9028), 1973; Thirty-Second Session, Supplement No. 37 (A/32/37), 1977; and Thirty-Fourth Session, Supplement No. 37 (A/34/37), 1979.

11/ See also an article prepared by the United Nations Secretariat on "The prevention of international terrorism" for the International Review of Criminal Policy, No. 34 (ST/ESA/SER.M/34), 1978, pp. 67-68. After the failure of the Ad Hoc Committee of Thirty-Five on International Terrorism, established by General Assembly resolution 3034 (XXVII) of 18 December 1972, other ad hoc committees established by the General Assembly with a view to studying or dealing with specific questions and aspects of the fight against international terrorism have been the Ad Hoc Committee for the drafting of the International Convention against the Taking of Hostages (General Assembly resolution 31/103 of 15 December 1976) and the Ad Hoc Committee for the elaboration of the International Convention for the Suppression of Terrorist Bombings and, subsequently, other conventions dealing with international terrorism (General Assembly resolution 51/210 of 17 December 1996).

12/ These are: Convention on the Prevention and Punishment of Crimes against Internationally Protected Persons, including Diplomatic Agents, adopted by the General Assembly on 14 December 1973; International Convention against the Taking of Hostages, adopted by the General Assembly on 17 December 1979; Convention on the Safety of United Nations and Associated Personnel, adopted by the General Assembly on 9 December 1994 and not yet in force; International Convention for the Suppression of Terrorist Bombings, adopted by the General Assembly on 15 December 1997 and not yet in force. The remaining global anti-terrorist conventions are: Convention on Offences and Certain Other Acts Committed on Board Aircraft, signed at Tokyo on 14 September 1963; Convention for the Suppression of Unlawful Seizure of Aircraft, signed at the Hague on 16 December 1970; Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation, concluded at Montreal on 23 September 1971; the Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation, signed at Montreal on 24 February 1988; Convention on the Physical Protection of Nuclear Material, adopted at Vienna on 3 March 1980; Convention for the Suppression of

Unlawful Acts against the Safety of Maritime Navigation, done at Rome on 10 March 1988; Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms located on the Continental Shelf, done at Rome on 10 March 1988; Convention on the Marking of Plastic Explosives for the Purpose of Detection, done at Montreal on 1 March 1991. For completeness, it may as well be mentioned that at the regional level there are five conventions aiming at combating acts of international terrorism: the Organization of American States Convention to Prevent and Punish the Acts of Terrorism Taking the Form of Crimes Against Persons and Related Extortion that are of International Significance, concluded at Washington, D.C., on 2 February 1971; the European Convention on the Suppression of Terrorism, concluded at Strasbourg on 27 January 1977; the Dublin Agreement concerning the Application of the European Convention on the Suppression of Terrorism among Member States (European Union), signed at Dublin on 4 December 1979; the South Asian Association for Regional Cooperation (SAARC) Regional Convention on Suppression of Terrorism, signed at Kathmandu on 4 November 1987; the Arab Convention on the Suppression of Terrorism, signed at a meeting held at the General Secretariat of the League of Arab States in Cairo from 22 to 24 April 1998.

13/ See Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 49/60 of 9 December 1994, and Declaration to Supplement the 1994 Declaration on Measures to Eliminate International Terrorism annexed to General Assembly resolution 51/210 of 17 December 1996.

14/ See General Assembly resolutions: 3034 (XXVII) of 18 December 1972; 31/102 of 15 December 1976; 32/147 of December 1977; 34/145 of 17 December 1979; 36/109 of 10 December 1981; 38/130 of 19 December 1983; 39/159 of 17 December 1984; 40/61 of 9 December 1985; 42/159 of 7 December 1987; 44/29 of 4 December 1989; 46/51 of 9 December 1991; 48/122 of 20 December 1993; 49/60 of 9 December 1994; 49/185 of 23 December 1994; 50/53 of 11 December 1995; 50/186 of 22 December 1995; 51/210 of 17 December 1996; 52/133 of 12 December 1997; 52/165 of 15 December 1997; 53/108 of 8 December 1998.

15/ A/CONF.157/23 (25 June 1993), Part I, para. 17.

16/ Ibid. See also para. 30.

17/ See Commission resolutions 1994/46 of 4 March 1994; 1995/43 of 3 March 1995; 1996/47 of 19 April 1996; 1997/42 of 11 April 1997; 1998/47 of 17 April 1998; 1999/27 of 26 April 1999. And see Sub-Commission resolutions 1994/18 of 25 August 1994; 1996/20 of 29 August 1996; 1997/39 of 28 August 1997; 1998/29 of 26 August 1998.

18/ See Commission resolution 1994/46 of 4 March 1994, para. 5 and Sub-Commission resolution 1994/18 of 25 August 1994, para. 3.

19/ See, for example, General Assembly resolutions 40/61 of 9 December 1985, fourth preambular paragraph and paragraph 2; 32/147 of 16 December 1977, first preambular paragraph and paragraphs 1 and 4; 31/102 of 15 December 1976, first preambular paragraph and paragraphs 1 and 4; 3034 (XXVII) of 18 December 1972, first preambular paragraph and paragraphs 1 and 4; 34/145 of 17 December 1979, third preambular paragraph and paragraphs 3

and 4; 36/109 of 10 December 1981, third preambular paragraph; 38/130 of 19 December 1983, third preambular paragraph and paragraph 1; 42/159 of 7 December 1987, seventh and sixteenth preambular paragraphs and paragraphs 2 and 8; 44/29 of 4 December 1989, eighth and fourteenth preambular paragraphs and paragraphs 2, 6 and 9; 46/51 of 9 December 1991, seventh and thirteenth preambular paragraphs and paragraphs 2, 6 and 9.

20/ See E/CN.4/Sub.2/1997/28 of 26 June 1997, para. 15.

21/ General Assembly resolution 217 A (III) of 10 December 1948.

22/ General Assembly resolution 2200 A (XXI) of 16 December 1966.

23/ Article 4 of the International Covenant on Civil and Political Rights. See also General Comment No. 6, article 6 and General Comment No. 20, article 7 of the Human Rights Committee (HRI/GEN/1/Rev.1 at 6 (1994) and HRI/GEN/1/Rev.1 at 30 (1994) respectively).

24/ See, for instance, the European Court of Human Rights acknowledgement in the Ireland v. UK case, A/25, para. 149, that "it is not called upon to take cognizance of every single aspect of the tragic situation prevailing in Northern Ireland. For example, it is not required to rule on the terrorist activities in the six counties of individuals or groups, activities that are in clear disregard of human rights" (emphasis added), quoted by C. Warbrick, "Terrorism and Human Rights", in Human Rights: New Dimensions and Challenges, J. Symonides (ed.), Dartmouth, UNESCO, 1998, p. 225, note 27.

25/ See, for example, P. Sieghart, The International Law of Human Rights, Oxford, Clarendon Press, 1990, p. 105 and T. Opsahl, "Articles 29 and 30: the other side", in The Universal Declaration of Human Rights: A Commentary, A. Eide, G. Alfredsson, G. Melander, L.A. Rehof and A. Rosas (eds.), Oslo, Scandinavian University Press, 1992, p. 465.

26/ E/CN.4/Sub.2/1997/28 of 26 June 1997, para. 8.

27/ Ibid., para. 4, (d) and (e), as well as notes 17 and 19 above.

28/ See, for example, Report on terrorism in Europe, Parliamentary Assembly of the Council of Europe, doc. 4258 of 5 December 1978 and, generally, Report of the Parliamentary Conference: "European democracies facing up to terrorism" (Strasbourg, 14-16 October 1998), Committee on Legal Affairs and Human Rights, doc. AS/Jur (1999) 11, of 22 February 1999. And see, for instance, General Assembly document A/53/489 of 12 September 1998, containing the declarations adopted at the Twelfth Summit of Heads of State and Government of the Rio Group (Panama City, 4-5 September 1998), p. 9, and A/53/72-S/1998/156 of 27 February 1998, containing resolutions 53/8-P(IS), 54/8-P(IS) and 55/8-P(IS) adopted by the Islamic Summit Conference (Session of Dignity, Dialogue, Participation held at Tehran, 9-11 December 1997), p. 177 ff.

29/ See generally C. Bassiouni, "Toward a Universal Declaration on the Basic Principles of Democracy: From Principles to Realisation", in Democracy: its Principles and Achievement, edited by the Inter-Parliamentary Union, Geneva, 1998, p. 2 ff.

30/ See article 29, paragraph 2 of the Universal Declaration, articles 4 and 8 paragraph 1 (a) of the International Covenant on Economic, Social and Cultural Rights, and articles 14 paragraph 1, 21, and 22 paragraph 2 of the International Covenant on Civil and Political Rights.

31/ See generally Opsahl, op. cit., note 25 above, p. 450 ff.

32/ See the study of the Special Rapporteur, E.-I. A. Daes, Freedom of the Individual under Law: an Analysis of article 29 of the Universal Declaration of Human Rights (United Nations publication, Sales No. E.89.XIV.5), and the reports of the Special Rapporteurs, D. Türk and L. Joinet, on the right to freedom of opinion and expression, E/CN.4/Sub.2/1990/11 of 18 July 1990 and E/CN.4/Sub.2/1991/9 of 16 July 1991.

33/ J. Lively, Democracy, Oxford, Blackwell, 1975, p. 51, cited by Daes, op. cit., p. 128, and also by D. Türk and L. Joinet in E/CN.4/Sub.2/1990/11, op. cit., p. 19, note 32 above.

34/ A/CONF.157/23 (25 June 1993), Part I, para. 8.

35/ DPI/1394-39399-August 1993, pp. 10 and 18.

36/ Quoted by K.M. Srivastava, "Democracy and Terrorism", in Democracy and Terrorism, G.N. Srivastava (ed.), New Delhi, International Institute for Non-Aligned Studies, 1997, p. 57.

37/ See, for example, General Assembly resolutions 48/122 of 20 December 1993, paragraph 1; 49/185 of 23 December 1994, paragraph 1; 50/186 of 22 December 1995, paragraph 2; 52/133 of 12 December 1997, paragraph 3. See also Commission resolutions 1994/46 of 4 March 1994, paragraph 1; 1995/43 of 3 March 1995, paragraph 1; 1996/47 of 19 April 1996, paragraph 2; 1997/42 of 11 April 1997, paragraph 2; 1998/47 of 17 April 1998, paragraph 3; 1999/27 of 26 April 1999, paragraph 1. And see Sub-Commission resolutions 1993/13 of 20 August 1993, paragraph 1; 1994/16 of 25 August 1994, paragraph 1; 1996/20 of 29 August 1996, paragraph 1; 1997/39 of 28 August 1997, paragraph 1.

38/ Notes 28 and 15 above.

39/ See generally G. Wardlaw, Political Terrorism: Theory, tactics and countermeasures, Cambridge, Cambridge University Press, 1982 and P. Wilkinson, Terrorism and the Liberal State, London, Macmillan, 1986.

40/ See, for instance, N.N. Vohra, "Democracy and management of terrorism", in Democracy and Terrorism, op. cit., note 36 above, pp. 176-177; and see also International Association of Penal Law, International Society for Criminology, International Society for Social Defence and International Penal and Penitentiary Foundation, Contribution to the Eighth United Nations Congress on the Prevention of Crime and the Treatment of Offenders (Havana, Cuba, 27 August-7 September 1990), on Effective National and International Action against: (a) Organized Crime; (b) Terrorist Criminal Activities (Topic 3 on the Provisional Agenda), in particular the reports by C. Bassiouni, pp. 55 ff., and C. Barrantes, G. Picca and A. Beristain, pp. 76 ff.

41/ See also R.H. Kupperman and D.M. Trent, Terrorism: Threat, Reality, Response, Stanford, California Hoover Institution Press, 1979, pp. 140-141 and O. Schachter, International Law in Theory and Practice, Dordrecht, M. Nijhoff Publishers, 1991, p. 163.

42/ See H.-P. Gasser, "Prohibition of terrorist acts in international humanitarian law", extract from the International Review of the Red Cross, July-August 1986.

43/ E/CN.4/Sub.2/1997/28 of 26 June 1997, paras. 11 and 17

44/ A/CONF.183/9.

45/ See, for instance, the different statements and explanations of vote recorded in the General Assembly and in the Commission on Human Rights during the adoption of their resolutions on human rights and terrorism.

46/ See, for instance, the summary record of the discussion on human rights and terrorism, restricted to members of the Sub-Commission, during the 11th meeting of its forty-seventh session (E/CN.4/Sub.2/1995/SR.11 of 11 August 1995) and, in particular, the following remarks made by Mr. A. Eide after his relating the issue to the question of minimum humanitarian standards: "The issue was also linked with the overall human rights movement which, possibly for too long, had been concentrating on repressive measures adopted by Governments and had paid too little attention to the means that were being used by those who were opposing Governments. That was an area which the human rights movement had not yet been able to address. It should do so in the immediate future" (emphasis added), p. 5.

47/ See, for instance, Note by the High Commissioner for Human Rights, "Further promotion and encouragement of human rights and fundamental freedoms, including the question of the programme and methods of work of the Commission" (E/CN.4/1997/3 of 30 September 1996) reporting on the exchange of views of the special rapporteurs/representatives/experts and chairpersons of working groups of the special procedures of the Commission and of the advisory services programme on "The problem of the relationship between terrorist activities and human rights in the context of participants' mandates" (agenda item 9), pp. 11-13.

48/ See E/CN.4/Sub.2/1997/28 of 26 June 1997, para. 13.

49/ W. Laqueur, "The new face of terrorism", The Washington Quarterly, Autumn 1998, p. 177.

50/ See B. Hoffmann, "Terrorism and the WMD: Some Preliminary Hypotheses", The Nonproliferation Review, Spring-Summer 1997, pp. 45-53.

51/ Ibid., at p. 50. See also Curbing Illicit Trafficking in Small Arms and Sensitive Technologies: An Action-Oriented Agenda, P. Gasparini Alves and D.B. Cipollone (eds.), UNIDIR/98/16, pp. 125-136

52/ See report of the Director General to the General Conference of the International Atomic Energy Agency, GC(40)/15 of 20 August 1996, fortieth regular session, entitled "Measures against illicit trafficking in nuclear materials and other radioactive sources". In July 1996, the International

Atomic Energy Agency and the World Customs Organization convened a joint meeting concerning the detection of and response to illicit cross-border movement of radiation material and produced a number of recommendations to States in this regard.

53/ R.A. Falkenrath, "Confronting nuclear, biological and chemical terrorism", Survival, vol. 40, No. 3, 1998, p. 46.

54/ J.S. Nye, Jr., "U.S. security policy challenges for the 21st century", reprinted from United States Foreign Policy Agenda: "U.S. security policy in a changing world", an electronic journal of the United States Information Agency, vol. 3, No. 3, July 1998, p. 3.

55/ See E.M. Spiers, "Chemical and biological terrorism", in Brassey's Defence Yearbook 1996, London and Washington, Brassey's, 1996, pp. 254-272. A Japanese government report indicates that most of the victims of the sarin gas attack continued to suffer almost four years after the attack, see Associated Press (Tokyo) report, "More than half Tokyo subway gas victims still suffering", of 28 January 1999: "More than 70 per cent of the respondents in the survey said they cannot shake off post-traumatic stress disorder and other psychological effects of the gas attack, Kyodo News agency quoted the government report as saying"; and "In replying to the multiple-choice survey, 54 per cent of the respondents said they had physical problems, while 57 per cent complained of psychological disorders, the Kyodo report said".

56/ See the very informative UNIDIR publication, op. cit., note 51, supra, pp. 1 ff.

57/ For example, in its resolutions on "International action to combat drug abuse and illicit production and trafficking", the General Assembly has repeatedly expressed its deep alarm for "the growing violence and economic power of criminal organizations and terrorist groups engaged in drug-trafficking activities and other criminal activities, such as money laundering, and illicit traffic of arms and precursors and essential chemicals, and by the increasing transnational links between them" and reaffirmed "the danger and threat posed to civil society by drug trafficking and its links to terrorism, transnational crime, money laundering and the arms trade". See General Assembly resolutions 51/64 of 12 December 1996 and 52/92 of 12 December 1997, Preamble, paras. 3 and Part II, paras. 5.

58/ R. Clutterbuck, Terrorism in an Unstable World, London, Routledge, 1994, p. 87.

59/ See, for instance, W. Laqueur, "Postmodern Terrorism", Foreign Affairs, vol. 75, No. 5, September/October 1996, pp. 32-33; id., op. cit., note 49, supra, pp. 174-176; Hoffman, op. cit., note 50, supra, pp. 45 and 47; Spiers, op. cit., note 55, supra, pp. 256-257; Nye, op. cit., note 54, supra, p. 3.

60/ See, for instance, A. Carter, J. Deutsch, and P. Zelikov, "Catastrophic Terrorism: Tackling the New Danger", Foreign Affairs, vol. 77, No. 6, November/December 1998, pp. 83 ff. And Laqueur, op. cit., note 59, supra, p. 35. And see also, The White House, Office of the Press Secretary, 22 January 1999, Remarks by the President on Keeping America Secure for the 21st Century, containing United States President Clinton's statement on new initiatives to address terrorism and the new terrorist-emerging tools and threats, as well as Press Briefing by Attorney-General Janet Reno, Secretary of HHS Donna Shalala, and Richard Clarke, President's National Coordinator for Security Infrastructure and Counterterrorism, on the expansion of the United States Administration's efforts to combat the emerging threats of biological, chemical and cyber-terrorism.

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COMMISSION ON HUMAN RIGHTS

Sub-Commission on Prevention of
Discrimination and Protection
of Minorities
Fifty-first session
Item 12 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WITH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Reservations to human rights treaties

Working paper submitted by Ms. Françoise Hampson
pursuant to Sub-Commission decision 1998/113

GE.99-13829 (E)

Introduction

1. At its fiftieth session, the Sub-Commission, in decision 1998/113 entitled "Reservations to human rights treaties", recalling the letter from the Chairman of the Committee on the Elimination of Racial Discrimination addressed to the Chairman of the forty-eighth session of the Sub-Commission (E/CN.4/Sub.2/1997/31, annex), the concerns about reservations expressed by the Committee on the Elimination of Discrimination against Women, the report of the Secretary-General on the views of the six human rights treaty bodies on the Preliminary Conclusions of the International Law Commission (E/CN.4/Sub.2/1998/25) and the Vienna Declaration and Programme of Action, which emphasized the need to limit the number and scope of reservations to human rights treaties, decided to request Ms. Françoise Hampson to prepare, without financial implications, a working paper on the question of reservations to human rights treaties, to be considered by the Sub-Commission at its fifty-first session.

2. In addition to the documents referred to above, the issue has been dealt with by the Human Rights Committee, established under the International Covenant on Civil and Political Rights, in General Comment No. 24 on issues relating to reservations made upon ratification or accession to the Covenant or the Optional Protocols thereto, or in relation to declarations under article 41 of the Covenant (CCPR/C/21/Rev.1/Add.6, 11 November 1994), which has attracted critical comments by the United States of America, the United Kingdom of Great Britain and Northern Ireland and France, and by the Special Rapporteur of the International Law Commission, Alain Pellet, in his second report on reservations to treaties (A/CN.4/477/Add.1, 13 June 1996), which deals expressly with reservations to human rights treaties.

3. The function of this working paper is simply to introduce some of the relevant issues. It is not possible within the constraints of such a paper either to explore the issues in any depth or to give references to all sources. Ms. Hampson wishes to thank Ms. Basak Cali and Ms. Maria Logotheti for research assistance with the paper and the International Federation of Human Rights Leagues (FIDH) for the results of its research amongst its constituent organizations.

Issues

4. Many ratifications of human rights treaties are accompanied by reservations. Certain treaties are more affected than others, the Convention on the Elimination of Discrimination against Women being a notable example. The types of reservations vary enormously. A significant proportion concern monitoring and/or procedural provisions under the particular treaty, rather than reservations to the substantive norms. Reservations which concern substantive norms also take a variety of forms. Some assert the non-acceptance of a particular provision. Others accept part or whole of the treaty insofar as consistent with an independent body of law, such as Islamic law or the particular State's domestic law. (An analysis of reservations to certain human rights treaties is provided in annex 1.) Certain statements take the form of interpretative declarations or may not indicate whether the reserving State understands them to be interpretative declarations or reservations. That then becomes a matter of construction.

5. Stated baldly, the principal issues appear to be:

(a) Is there a special feature of human rights treaties which means that a special regime applies to reservations to human rights treaties, either on account of the special legal character of the treaties themselves or because reservations to such treaties need to be treated in a special way? If so, what is the special regime applicable to reservations to human rights treaties?

(b) If not, what is the general regime applicable to reservations to human rights treaties?

(c) In applying the relevant and appropriate reservations regime in practice to a particular reservation, are there special characteristics of human rights treaties which may be relevant to the interpretation of a reservation?

(d) In the case of a treaty which establishes a judicial or quasi-judicial enforcement or monitoring body, who determines the validity of a reservation, the contracting States and/or that body?

(e) What is the effect of the view of an enforcement or monitoring body that a reservation is invalid on the reserving State's ratification and on other parties?

6. There appears to be some measure of shared understanding, if not agreement, with regard to the first four issues, subject to differences of nuance and emphasis. There is, however, a marked divergence of view with regard to the final issue. The issues will be examined in turn.

(a) Unique character of human rights treaties

7. It has sometimes been suggested that human rights treaties have a unique legal character or status, affecting the legal regime applicable to reservations to such treaties. The first difficulty with this hypothesis is that of delimiting what constitute human rights treaties. It would then be necessary to find a characteristic which they have in common and which is not shared by other treaties. One argument is that human rights treaties are "objective" in character, which appears to be similar to the claim that they are unilateral undertakings made by States and not subject to the normal rules on reciprocity. Subject to the definitional problem referred to above as to what constitutes a human rights treaty, there may be exceptions to such an alleged principle. Furthermore, other commitments would appear to share this characteristic. The nature of the content of human rights treaties may have a significant impact on the interpretation of their provisions and of any reservations but that concerns the issues addressed under (c) below, rather than the claim that human rights treaties are, as a matter of law, in a special category.

8. Even if human rights treaties are not, as such, in a special legal category, it might nevertheless be possible that a special regime was applicable specifically to reservations to such treaties. Such an argument is, however, weakened if human rights treaties are not themselves seen as

being in a special category. The evidence of the Advisory Opinion of the International Court of Justice in the case on Reservations to the Convention on the Prevention and Punishment of the Crime of Genocide (I.C.J. Reports 1951), the travaux préparatoires of the 1969 Vienna Convention on the Law of Treaties and the Convention itself suggest that the formula set out in article 19 of the Convention was seen as being of general applicability. There is no evidence that it was envisaged that it would not apply to a particular type or class of treaty. Article 19 of the Vienna Convention provides:

> "A State may, when signing, ratifying, accepting, approving or acceding to a treaty, formulate a reservation unless:
>
> (a) the reservation is prohibited by the treaty;
>
> (b) the treaty provides that only specified reservations, which do not include the reservation in question, may be made; or
>
> (c) in cases not falling under subparagraphs (a) and (b), the reservation is incompatible with the object and purpose of the treaty."

It would therefore appear that there is no special legal regime applicable to reservations to human rights treaties on account either of the legal character of the treaties themselves or of reservations to them.

(b) What is the legal regime applicable to reservations to human rights treaties?

9. The legal regime applicable to reservations to human rights treaties would appear to be that contained in article 19 of the Vienna Convention, quoted above. That is to say that a treaty may prohibit a specific reservation or all reservations. If it does not do so, reservations are permitted provided that they are compatible with the objects and purposes of the treaty.

10. This gives rise to a wide range of difficulties in practice. Some of them will be examined under (d) and (e) below. Here, attention will be drawn to just one problem with this approach to reservations. Article 20 of the Vienna Convention details four effects which may flow from a reservation. Three relate to specific situations: where the treaty expressly authorizes the reservation; where the application of the treaty in its entirety is an essential condition of the consent of each State to be bound; and where the treaty is a constituent instrument of an international organization. The residual provision is found in article 20, paragraph 5. In cases other than the three situations described, a State is deemed to accept a reservation if it does not raise an objection within 12 months after notification of the reservation. When one considers the number of multilateral treaties to which many States are party and the number of potential other parties, it would be surprising if States were meticulous in examining the reservations of other States in order to indicate a view. Silence seems to be a common response. It would seem unlikely to be usually the result of conscious deliberation on the part of other high contracting parties. This is not invalidated by the fact that, occasionally, States do react and object to the reservations of

other States, as certain States did to some of the reservations of the United States to the International Covenant on Civil and Political Rights. Given that there is no legal requirement that States examine every reservation with a view to determining whether it is compatible with the objects and purposes of the treaty, it would appear unwise to assume that silence on that score means that they think that the reservation is compatible.

11. A further complication arises where one or a few States object to the reservation on that ground. Again, in the absence of a legal requirement to comment, it would seem unwise to assume that all other States accept the reservation. The criterion invoked by the objecting State(s) appears, however, to be objective in character. A State does not have to give reasons for objecting to a reservation. If a group of States simply stated that they did not accept a particular reservation, whilst others accepted it, there would be no particular difficulty. It is hard to see, however, how a reservation can be simultaneously compatible and incompatible with the objects and purposes of the treaty. There is no doubt that objecting States can reject the *opposability* of the reservation to themselves but, in making this particular claim, they are challenging its *validity*. This problem is only exacerbated where the treaty creates an enforcement or monitoring mechanism (see (d) and (e) below).

(f) In applying the reservations regime to a particular reservation, are there special characteristics of human rights treaties which have an impact on the interpretation of the reservation?

12. Human rights treaty texts appear to be dynamic documents whose interpretation evolves over time. States have, generally, accepted the views of enforcement and monitoring bodies when the latter have applied a human rights norm to a situation or phenomenon which did not exist when the text was adapted and which was not within the contemplation of the parties. Priority appears to be given to a teleological interpretation of human rights provisions and to a desire to make the norms effective.

13. In addition, human rights norms do not exist in a legal vacuum. One of the objects of the Charter of the United Nations is the promotion of human rights and there has been increasing recognition of the link between respect for human rights and the fundamental goal of any international legal order, that of maintaining international peace and security. Human rights norms do not merely express moral values but those values are essential to international society. They are constitutive of an international legal order. This results in an overlap between moral values and legal principles because the object and purpose of a human rights norm is, ultimately, the maintenance of international peace and security.

14. For this reason, where a reservation to a treaty takes the form of rejection of a human rights norm, as opposed to an interpretation of its scope, it is perhaps more likely to be found incompatible with the objects and purposes of this treaty than are reservations to other treaties. A reservation which seeks to interpret the human rights provisions in conformity with an independent body of law may fall in the middle of the spectrum. Whilst it may appear to be interpreting the scope of the human rights norm, it is subjecting it to a different legal order, often either domestic or

religious. There is no necessary identity of interest between those legal orders and the promotion of an international legal order. Where the State's objection is not to the norm but to its immediate application, difficult questions may arise, particularly if the reservation is interpreted quite some time after first being made.

15. The evolving interpretation of human rights treaties opens the possibility that an originally valid reservation may become invalid. It is not clear how other high contracting parties may indicate new objections to a reservation of which they have had more than 12 months' notice, the time period stipulated in article 20, paragraph 5 of the Vienna Convention.

16. Given the relationship between human rights norms and the maintenance of international peace and security, there is a very real possibility that a provision will be interpreted as having a particular legal character, with consequences for the validity of a reservation. It is not that human rights treaties have a special character per se but that particular provisions may have a greater than usual likelihood of being found, in substance, to have a special character.

17. The three issues most likely to arise in this context are, first, the claim that the human rights provision represents ius cogens; second, that being non-derogable in character, a norm has a higher status than customary international law and, third, that the norm represents customary law. The first two claims, if substantiated, may adversely affect the likelihood that a reservation will be found compatible with the objects and purposes of such a provision. It is much less clear that such a consequence may flow from finding that a human rights treaty norm corresponds to a norm of customary international law. States may well accept the customary status of a norm without being obliged to accept it as part of a treaty obligation.

18. It is open to argument whether the fact that violation of a human rights treaty norm is, independently of the treaty, subject to universal or international criminal jurisdiction should affect the validity of a reservation to the human rights norm. Whilst the two instances represent different types of legal liability and have, usually, different types of defendants as a matter of common sense, some connection between the two types of liability is likely to operate in practice. It would be strange that a State agent could be indicted for a crime against humanity before the international criminal court or the domestic courts of any State but that the State on whose behalf he acted could enter a valid reservation to the corresponding human rights treaty norm.

19. It seems clear that, even if human rights treaties do not have a special character per se, nevertheless the subject matter of at least some human rights law and its object and purpose make it more than usually likely that reservations to the norms themselves will be found to be incompatible with the object and purpose of the treaty.

(g) Where a treaty establishes an enforcement/monitoring body, who determines the validity of a reservation?

20. It does not appear to be disputed that enforcement/monitoring bodies have the authority to determine what comes within their competence. That must, logically, include the authority to determine the validity of a reservation which would affect the scope of their competence or jurisdiction. It appears to be an inherent feature of the type of authority which they are given. It should be emphasized that this refers only to the validity of the reservation and not to the effects of an invalid reservation (see (e) below).

21. That still leaves the question whether enforcement/monitoring bodies have the *sole* authority to determine the validity of a reservation, where a State has a reservation to a particular provision and no other State has objected. The conclusion of the enforcement/monitoring body that the reservation is invalid will, in practice, be of considerable significance in the bilateral relations between the reserving State and the body. If other States not merely failed to object but positively indicated their acceptance of the reservation, this collective view would no doubt be regarded as important by the enforcement/monitoring body, but it would not be binding upon it.

22. A problem could potentially arise where the enforcement/monitoring body accepts the validity of a reservation to which at least some States have objected. For most purposes involving the bilateral relations between the reserving State and the body, the view of the body would appear to be decisive. The problem could, however, arise where the body was called upon to address an inter-State component between the reserving State and an objecting State.

(h) The effect of the view of the enforcement/monitoring body that a reservation is invalid

23. This section does not address the issue of whether a reservation is invalid but the *effects* of such a determination. It is only concerned with situations in which the enforcement/monitoring body is of that view, rather than other States. It is necessary to consider the effects on the ratification of the reserving State and also on other parties. The effects of a finding that a reservation is invalid may vary according to whether it is a specific reservation to a particular provision or whether objection is taken to a type of reservation (for example, one which subjects the interpretation of the treaty norm to Islamic law or domestic law, or one which leaves it to the State to determine the characterization of a situation as an emergency or whether it has any national minorities in its jurisdiction). In practice, the latter objection may be generally more sensitive.

24. Whilst the 1969 Vienna Convention on the Law of Treaties deals with the effects of objections to reservations by other States parties, it does not address the consequences of a finding of invalidity by an enforcement/monitoring body established under a particular treaty.

(i) The enforcement/monitoring body

25. The options theoretically available to the body are:

(i) Severance of the invalid reservation or any invalid application of the reservation, leaving the ratification, including any other reservations, intact. The other reservations may subsequently be found to be invalid. Such an approach has been adopted most notably by the European Court of Human Rights. It would appear to assume that the reservation was not a precondition for the ratification. In some cases, however, the reservation may have been required by the domestic legislative as a condition for its consent to ratification.

(ii) To decide that the invalid reservation taints the whole ratification. That would presumably require the enforcement/monitoring body to ask the State what it proposed to do about the reservation found to be invalid.

(iii) To call into question whether there is, in fact, a valid ratification. This is only likely to arise with very general and/or sweeping reservations. Whilst the body has the authority to determine the validity of a reservation, it is much less clear that it has the authority to determine whether a purported instrument of ratification can properly be characterized as an instrument of ratification. This would also raise the general policy question of whether it is better to have as many parties as possible to a human rights treaty, even with reservations, or whether it is more important to protect the integrity of the treaty.

(j) The effect on the reserving State

26. The key issue is whether the reserving State has any say in the consequences flowing from a finding by the enforcement/monitoring body that its reservation is invalid or whether, at least in the case of bilateral relations with the body, the consequences are determined exclusively by that body.

(k) The effect on other high contracting parties

27. The issue for other high contracting parties is whether they are bound by the finding of the enforcement/monitoring body in their bilateral relations with the reserving State under the treaty. Some such bodies (for example, the Inter-American Court of Human Rights and the European Court of Human Rights) have the authority to deliver binding judgements, but they are binding only on the respondent Government. Whilst the majority of enforcement/monitoring bodies cannot take binding decisions with regard to compliance, there would have been little point in creating them if their views were not to be regarded as, at the very least, very highly persuasive.

28. Where the reservation in question is one which has also been made by other States, the view of the body will put both those States and other contracting parties on notice that a similar view is likely to be taken of the reservations of the other States. The enforcement/monitoring bodies seek to develop a consistent interpretation of the human rights treaty texts. This principle would apply not only to similar reservations, but where the effects of what is, at first sight, a different reservation are similar.

29. An additional difficulty, in suggesting that the view of the enforcement/monitoring body as to invalidity has an effect on other contracting parties, is that the period of 12 months in which, under the Vienna Convention on the Law of Treaties, they can object to a reservation may have elapsed. The period starts to run after notice of the reservation. It might appear to be straining the interpretation of the Vienna Convention on the Law of Treaties to suggest that the time only started to run after notification of the invalidity of the reservation.

30. What has attracted most criticism from the three States which formally commented on the Human Rights Committee's General Comment No. 24 and from the Special Rapporteur of the International Law Commission is the view that the enforcement/monitoring body can determine for *itself* that the invalid reservation can simply be severed. This, in effect, ignores the invalid reservation and suggests that the body, rather than the reserving State, can determine whether the reservation was an essential condition of the State's ratification. The reasons why the three States objected to this approach vary slightly, at least in emphasis. It is recognized, at least by the Special Rapporteur of the International Law Commission, that the regional human rights enforcement bodies may be an exception.

Conclusion and recommendations

31. It is clear that reservations to human rights treaties pose quite particular difficulties, partly attributable to the fact that the Vienna Convention on the Law of Treaties did not contemplate the possibility of independent enforcement/monitoring bodies taking a view on the validity of reservations. That competence, however, necessarily flows from their functions. The subject matter of human rights treaties, especially but not only non-derogable provisions, also contributes significantly to the nature and scale of the problem.

32. The majority of studies to date have examined reservations to human rights treaties either as part of the general issue of reservations to treaties or else from the standpoint of a particular body monitoring a particular treaty.

33. What is lacking is a detailed and substantive examination of the reservations themselves, across different human rights treaties. There is a need for a comprehensive review to be carried out in cooperation with the enforcement/monitoring mechanisms and States and with the assistance of NGOs. Such a study should gather together reservations and interpretative declarations on human rights treaty norms by norm, by treaty and by State. States and NGOs should be asked to assist by commenting on the provisions of domestic law which make or made the reservation necessary, if it is necessary.

States should be asked whether they envisage removing the domestic impediment to withdrawing the reservation in due course and, where relevant, whether they regard a statement as an interpretative declaration or a reservation. They could also be asked what their choice would be between remaining a party to the human rights treaty without each reservation or denouncing the treaty, notwithstanding the political consequences.

34. Such a study would have financial implications. The person undertaking the study would require research assistance, probably two full-time assistants to ensure comprehensive coverage. There would also be the costs of communicating with States and other bodies for the information referred to above.

35. The current debate appears to have reached an impasse. Practical and constructive ways forward are most likely to emerge from the type of detailed study described. There is no reason to suggest that they could emerge in any other way. The Sub-Commission is therefore invited to recommend to the Commission on Human Rights at its next session that such a study be carried out.

Annex*

TABLES AND FIGURES SHOWING RESERVATIONS TO
HUMAN RIGHTS TREATIES AND PERCENTAGES OF
NORMATIVE AND PROCEDURAL RESERVATIONS

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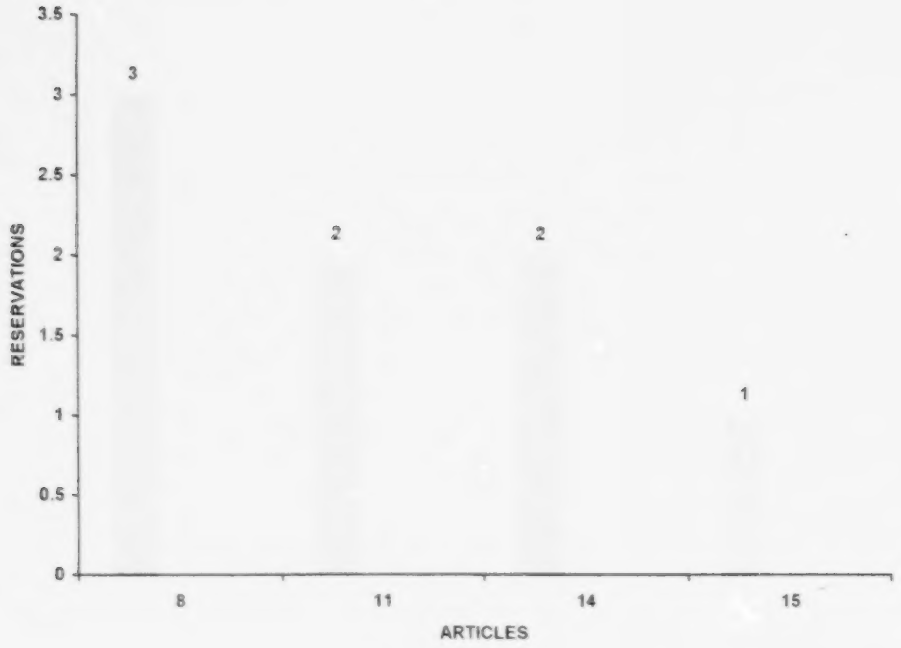
* The annex is reproduced as received, in the language of submission only.

Annex

RESERVATIONS TO THE CONVENTION ON THE REDUCTION OF STATELESSNESS



PERCENTAGES OF NORMATIVE AND PROCEDURAL RESERVATIONS

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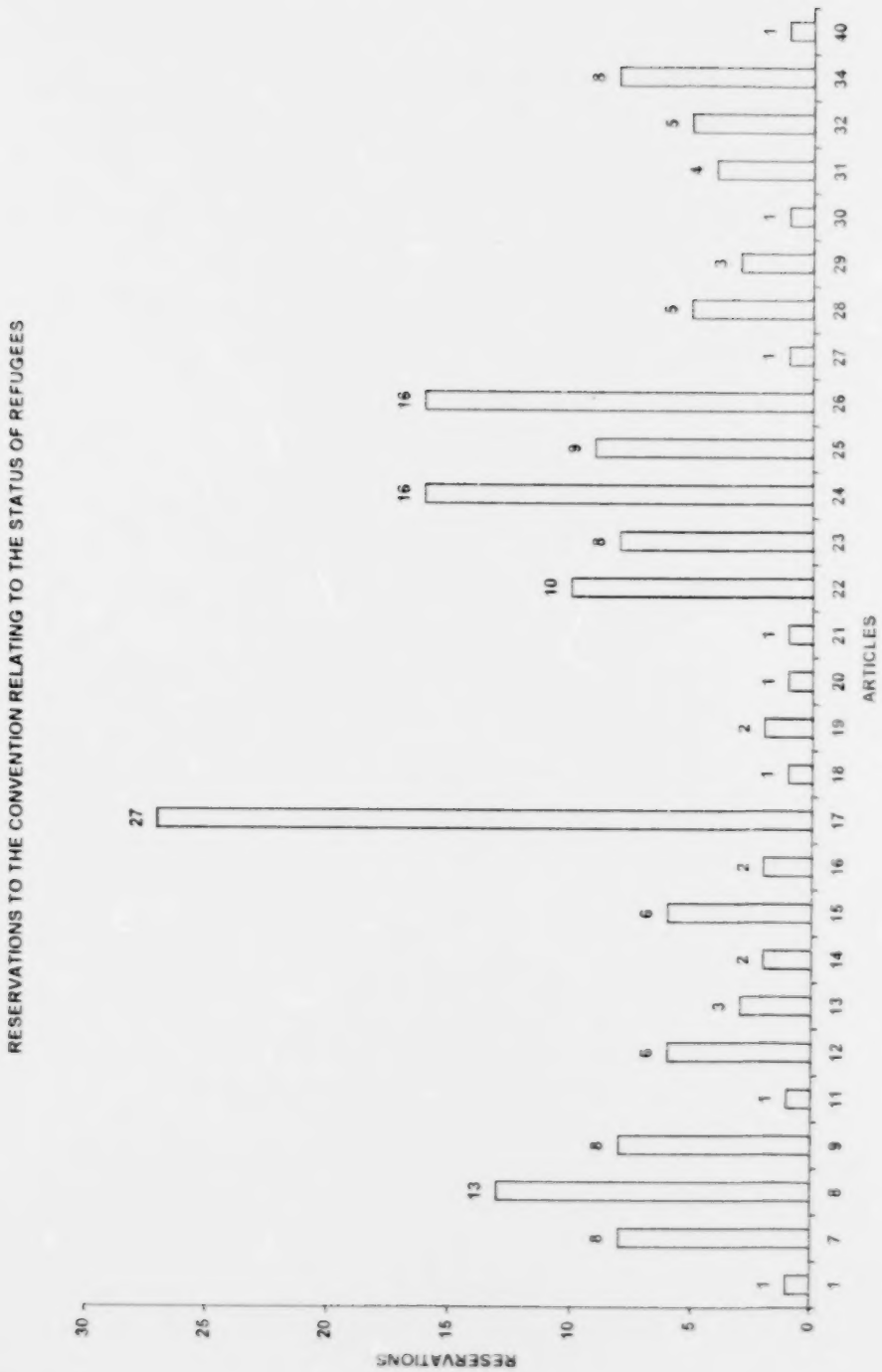
	Austria (3) (D)	France	France	Nigeria
	France (3)	Nigeria	Nigeria	
	Ireland (3)			
	UK (3a)			

D= Declaration

PROTOCOL RELATING TO THE STATUS OF REFUGEES	
ARTICLES	4
	Angola
	Botswana
	China
	Congo
	El Salvador
	Ghana
	Jamaica
	Rwanda
	UK
	Tanzania
	Venezuela

Reservations to procedural article only


RESERVATIONS TO THE CONVENTION RELATING TO THE STATUS OF REFUGEES
RESERVATIONS
ARTICLES
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1 7 8 9 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 34 40
1 8 13 8 1 6 3 2 6 2 27 1 2 1 1 10 8 16 9 16 1 5 3 1 4 5 8 1

PERCENTAGE OF NORMATIVE AND PROCEDURAL RESERVATIONS

CONVENTION RELATING TO THE STATUS OF REFUGEES

ARTICLES	1	7	8	9	11	12	13	14	15	16	17	18
	Ecuador	Botswana	Angola (D)	Angola (D)	Malta	Botswana	Malawi	China	Belgium	China	Angola	Malta
		Finland (2)	Ethiopia	Ethiopia		Egypt	Mozambique	Malta	Ecuador	Uganda	Austria	
		Honduras	Fiji	Fiji		Finland	Uganda		Malawi		Botswana	
		Madagascar (1)	Finland	Jamaica		Israel			Monaco		Burundi	
		Malawi	Israel	Madagascar		Spain			Mozambique		Chile	
		Malta (2)	Jamaica	Malta		Sweden			Uganda		Denmark	
		Monaco	Latvia	Uganda							Ethiopia	
		Uganda	Madagascar	UK							France	
			Malta								Honduras	
			Spain								Iran	
			Sweden								Ireland	
			Uganda								Jamaica	
			UK								Latvia	
											Liechtenstein	
											Madagascar	
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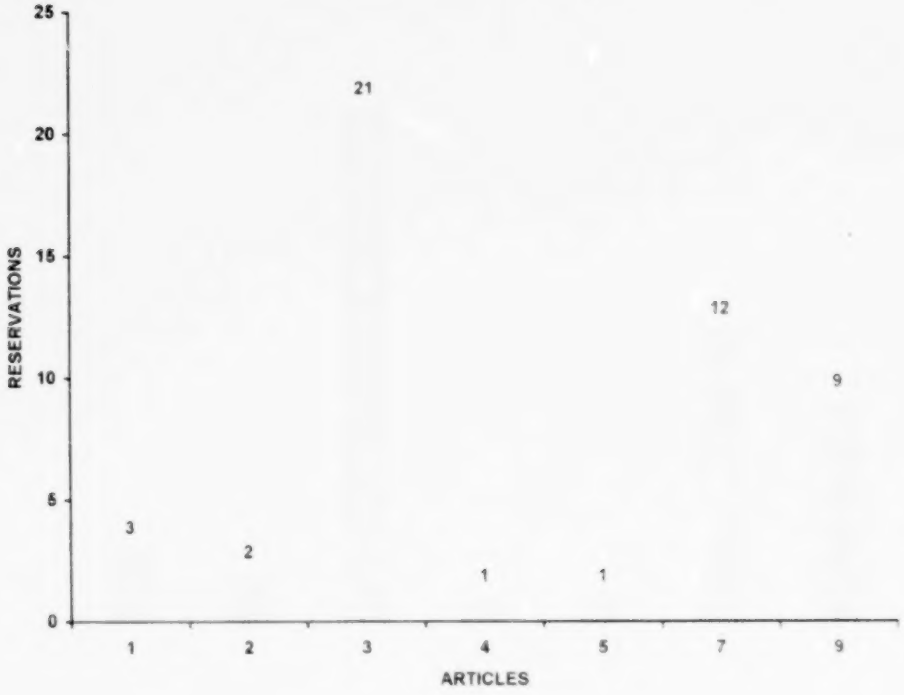
											Malta	
											Mozambique	
											Norway	
											Papua	
											Rep. of Korea	
											Sierra Leone	
											Sweden	
											Uganda	
											UK	
											Zambia	
											Zimbabwe	

D= Declaration

19	20	21	22	23	24	25	26	27	28	29	30	31	32
Malawi	Egypt	Papua	Austria	Austria	Canada	Austria	Angola	Malta	Estonia	France	Israel	Botswana	Botswana
Mozambique			Burundi	Canada	Egypt	Egypt	Botswana		Finland	Ireland		Honduras	Ireland
			Egypt	Egypt	Estonia	Fiji	Burundi		Israel	Sierra Leone		Malta	Malta
			Ethiopia	Estonia	Finland	Finland	Greece		Malta			Papua	Papua
			Malawi	Iran	Honduras	Ireland	Honduras		Zambia				Uganda
			Monaco	Malta	Iran	Jamaica	Iran						
			Mozambique	Monaco	Jamaica	Sweden	Latvia						
			Papua	Zimbabwe	Latvia	Uganda	Malawi						
			Zambia		Liechtenstein	UK	Mozambique						
			Zimbabwe		Malawi		Holland						
					Monaco		Papua						
					New Zealand		Rwanda						
					Poland		Spain						
					Sweden		Sudan						
					UK		Zambia						
					Zimbabwe		Zimbabwe						

34	40
Botswana	Holland (D)
Chile	
Honduras	
Latvia	
Malawi	
Malta	
Mozambique	
Papua	

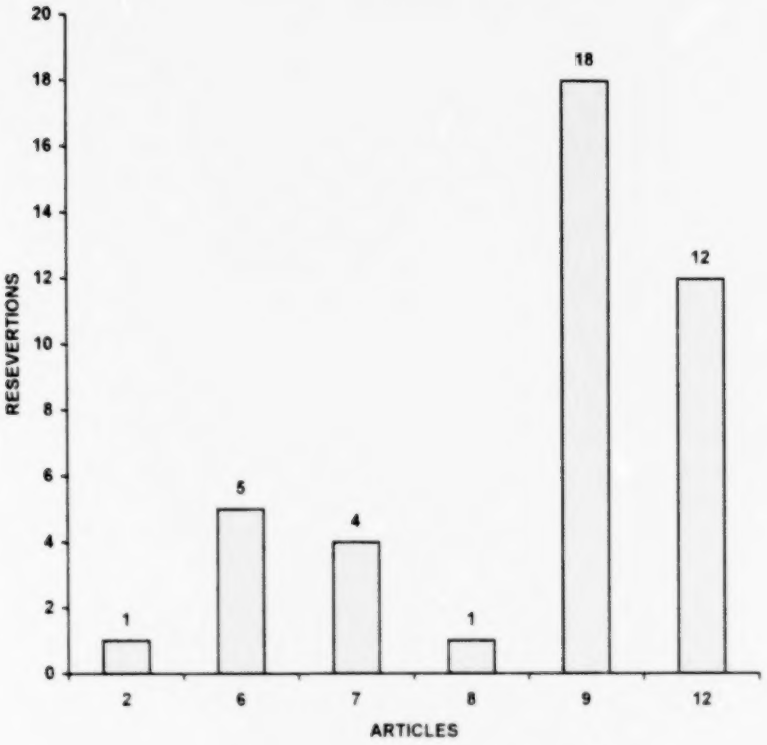
RESERVATIONS TO THE CONVENTION ON THE POLITICAL RIGHTS OF WOMEN



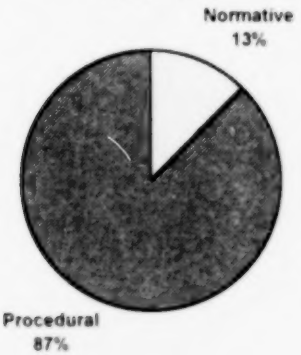
PERCENTAGES OF NORMATIVE AND PROCEDURAL RESERVATIONS TO THE TREATY

CONVENTION ON THE POLITICAL RIGHTS OF WOMEN							
ARTICLES	1	2	3	4	5	7	9
	Ecuador	Guatemala	Australia	Mongolia	Mongolia	Albania	Albania
	Guatemala	Spain	Austria			Bangladesh	Argentina
	Spain		Bangladesh			Belarus	Bangladesh
			Bulgaria			Bulgaria	Guatemala
			Belgium			Hungary	Indonesia
			Denmark			Indonesia	Nepal
			Finland			Poland	Tunisia
			Germany			Romania	Venezuela
			Guatemala			Russia	Yemen
			India			Ukraine	
			Ireland			Ukraine	
			Italy			Yemen	
			Leshoto				
			Malta				
			Mauritius				
			New Zealand				
			Pakistan				
			Sierra Leone				
			Spain				
			Swaziland				
			UK				

RESERVATIONS TO THE CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE



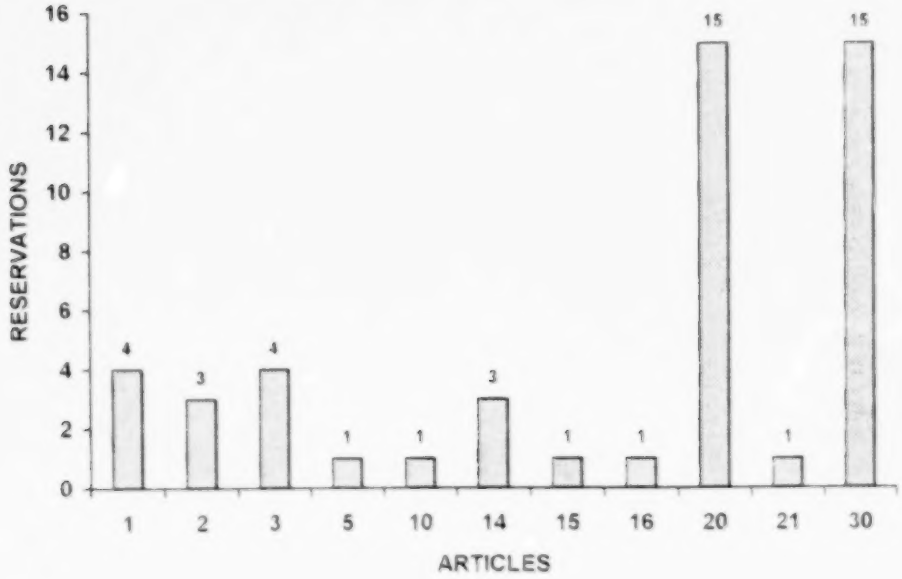
PERCENTAGES OF NORMATIVE AND PROCEDURAL RESERVATIONS TO THE TREATY



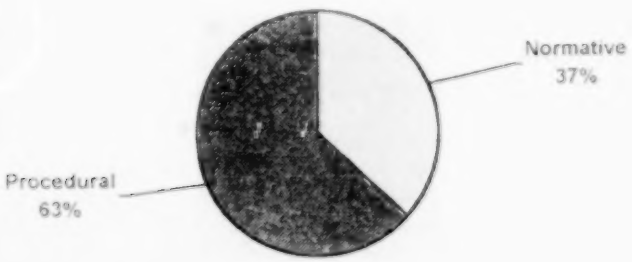
CONVENTION ON THE PREVENTION AND PUNISHMENT OF THE CRIME OF GENOCIDE						
ARTICLES	2	6	7	8	9	12
	USA (U)	Algeria	Malaysia (U)	Myanmar	Albania	Albania
		Myanmar	Morocco		Algeria	Algeria
		Philippines	Philippines		Argentina	Argentina
		USA (U)	Venezuela		Bahrain	Belarus
		Venezuela			Bangladesh	Bulgaria
					China	Hungary
					India	Mongolia
					Malaysia	Poland
					Mongolia	Romania
					Morocco	Russia
					Philippines	Ukraine
					Rwanda	Vietnam
					Singapore	
					Spain	
					USA	
					Venezuela	
					Vietnam	
					Yemen	

U= Understanding

RESERVATIONS TO THE CONVENTION AGAINST TORTURE, OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT



PERCENTAGE OF NORMATIVE AND PROCEDURAL ARTCILES OF THE TREATY



CONVENTION AGAINST TORTURE, OTHER CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT											
ARTICLES	1	2	3	5	10	14	15	16	20	21	30
	Cuba	Cuba	Cuba	Austria	USA	Bangladesh	Austria	USA	Afganistan	Tunisia	Afganistan
	Indonesia	Indonesia	Germany			New Zealand			Bahrain		Bahrain
	Luxemburg	Monaco	Indonesia			USA			Belarus		Chile
	USA		USA						Bulgaria		China
									China		Cuba
									Cuba		France
									Indonesia		Indonesia
									Israel		Israel
									Kuwait		Kuwait
									Morocco		Panama
									Poland		Poland
									Saudi Arabia		Saudi Arabia
									Tunisia		Turkey
									Ukrain		Ukrain
									Zambia		USA

RESERVATIONS TO THE CONVENTION ON THE RIGHTS OF THE CHILD
RESERVATIONS
ARTICLES

PERCENTAGE OF NORMATIVE AND PROCEDURAL RESERVATIONS TO THE TREATY

CONVENTION ON THE RIGHTS OF THE CHILD

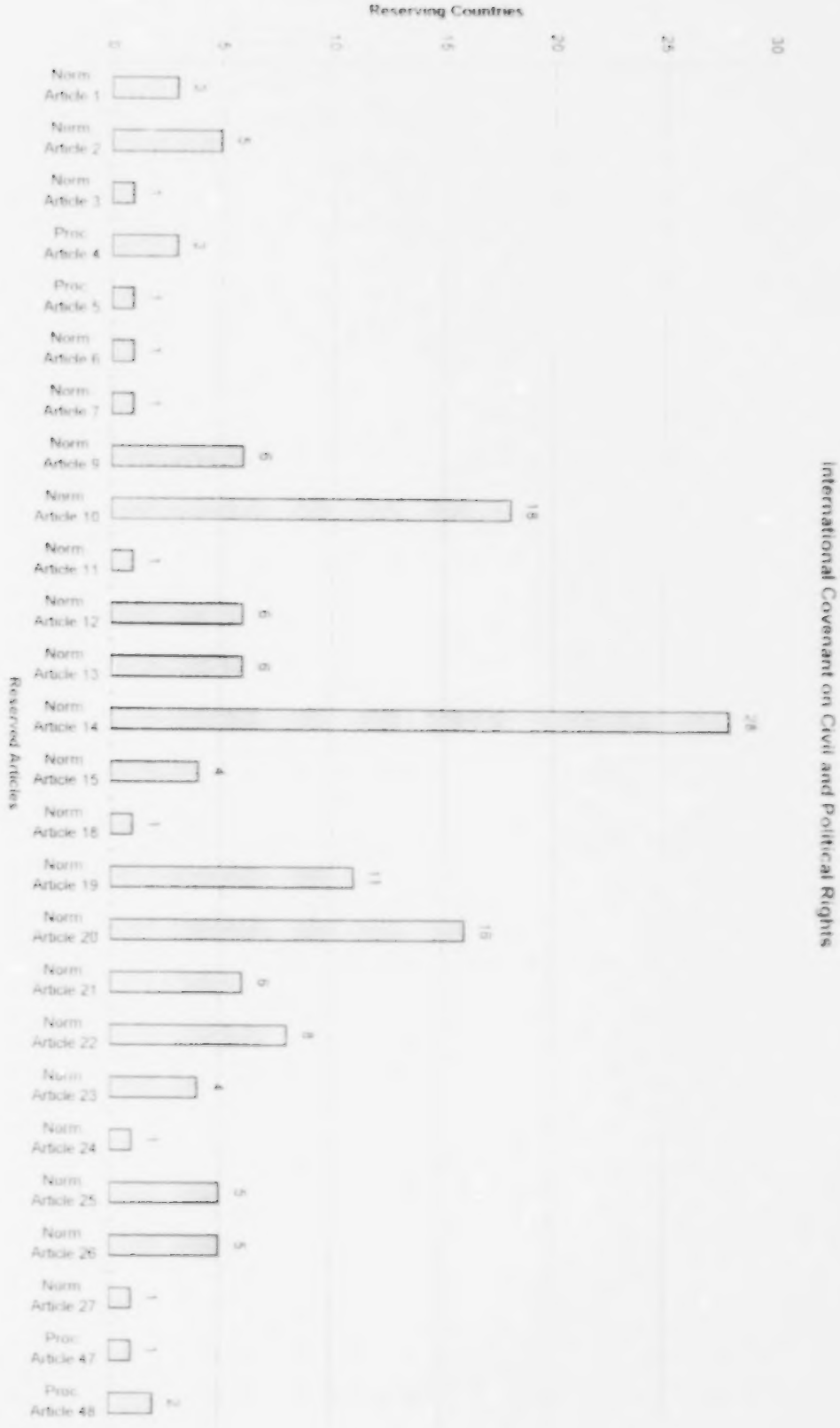
ARTICLES	1	2	3	4	5	6	7	8	9	10	12
	Botswana	Bahamas	Luxembourg	Swaziland	Singapore	Chile	Andorra*	Andorra*	Bosnia	Cook Islands	Poland*
	Cuba	Belgium*	Singapore		Switzerland	France*	Kuwait*		Germany*	Germany*	Singapore*
	Guatemala*	Colombia				Luxembourg	Liechtenstein		Ireland*	Japan*	Kiribati*
	Indonesia	Cook Islands*				Tunisia*	Luxembourg		Jamaica*	Liechtenstein	
	Liechtenstein*	Malaysia					Malaysia		Oman	Switzerland	
	Malaysia	Syria					Monaco*		Korea		
		Tunisia					Oman		Slovakia		
							Poland				
							Switzerland				
							Thailand				
							Tunisia				
							UAE				

*= Declaration

**= Understanding

13	14	15	16	17	18	19	20	21	22	24	26	28
Algeria*	Algeria*	Austria	Algeria*	Algeria*	Germany*	Singapore*	Brunei	Argentina	Germany*	Argentina*	Kiribati	Holy See
Austria	Bangladesh	Belgium*	Holy See	Austria			Egypt	Bangladesh	Indonesia	Holy See	Malta	Kiribati
Belgium*	Belgium*	Holy See	Indonesia	Indonesia			Jordan	Brunei	Malaysia	Kiribati	Holland	Malaysia
Brunei	Brunei	Luxembourg	Mali	Singapore				Canada	Mauritius	Poland*		Samoa
Holy See	Holy See	Malaysia	Poland	Turkey				Egypt	Holland*			Singapore
Kiribati*	Indonesia	Kiribati*	Kiribati*	UAE				Indonesia	Thailand			
Malaysia	Iraq	Poland*	Poland*					Jordan	UK			
Poland*	Jordan	Singapore*	Singapore*					Kuwait*				
Singapore*	Kiribati*							Maldives				
	Malaysia							Oman				
	Maldives							Rep of Korea				
	Morocco							Spain*				
	Holland*							Syria				
	Oman							UAE				
	Syria							Venezuela*				
	UAE											
	Poland*											
	Singapore*											

29	30	32	37	38	40	44	45	51
Indonesia	Canada**	India*	Australia	Austria*	Belgium*	Malaysia	Malaysia	Kiribati
Turkey	France*	New Zealand	Canada	Colombia	Denmark			
	Oman	Singapore	Cook Islands	Holland*	France*			
	Turkey	UK*	Iceland*	Poland	Germany			
	Venezuela*		Japan	Spain*	Malaysia			
			Malaysia	Uganda	Monaco			
			Holland		Holland			
			New Zealand		Korea			
			Singapore*		Switzerland			
			Switzerland		Tunisia			
			UK					


International Covenant on Civil and Political Rights
Reserved Articles
Reserving Countries
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Norm Article 1
Norm Article 2
Norm Article 3
Proc Article 4
Proc Article 5
Norm Article 6
Norm Article 7
Norm Article 9
Norm Article 10
Norm Article 11
Norm Article 12
Norm Article 13
Norm Article 14
Norm Article 15
Norm Article 18
Norm Article 19
Norm Article 20
Norm Article 21
Norm Article 22
Norm Article 23
Norm Article 24
Norm Article 25
Norm Article 26
Norm Article 27
Proc Article 47
Proc Article 48

International Covenant on Civil and Political Rights

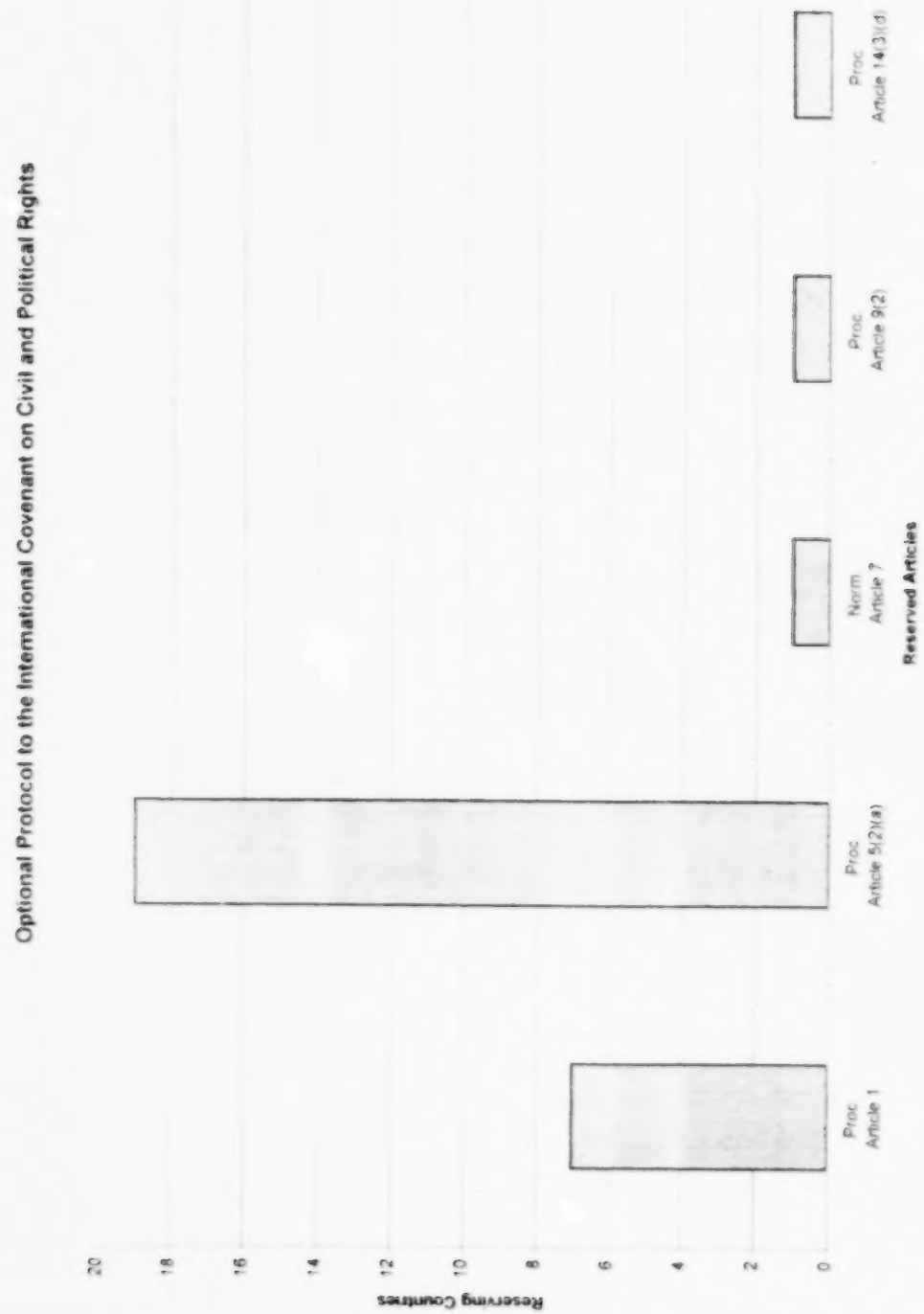
Article 1	*Article 2*	*Article 3*	*Article 4*	*Article 5*	*Article 6*	*Article 7*	*Article 9*
Romania 1(3) R	Austria 2(1) R	Kuwait D	France 4(1) R	U S A 5(2) D	Thailand 6(5) D	U S A R	Austria R
Thailand 1(1) D	Germany 2(1) R		Trinidad & Tobago 4(2) R				France R
U K D	Kuwait 2(1) D		U S A 4(1) D				Italy 9(5) D
	Monaco 2(1)R 2(2) D						Mexico 9(5)D
	U S A 2(1) D						Thailand 9(3) D
							U S A 9(5) D

Article 10	*Article 11*	*Article 12*	*Article 13*	*Article 14*
Australia 10(2)(a) 10(2)(b) 10(3) R	Congo R	Austria 12(4) R	France R	Australia 14(6) R
Austria 10(3) R		Belize 12(2) R	Iceland R	Austria 14(3)(d) 14(5) 14(7) R
Belgium 10(2)(a) 10(3) R		Italy 12(4) R	Malta R	Barbados 14(3)(d) R
Denmark 10(3) R		Netherlands 12(1) 12(2) 12(4) R	Mexico R	Belgium 14(1) 14(5) R
Egypt 10(2)(b) 10(3) R		Switzerland 12(1) R	Monaco D	Belize 14(3)(d) 14(6) R
Finland 10(2)(b) 10(3) R		U K 12(4) R	U K R in Hong-Kong	Denmark 14(1) 14(5) 14(7) R
Iceland 10(2)(b) 10(3) R				Egypt 14(7) R
Ireland 10(2) R				Finland 14(7) R
Luxembourg 10(3) R				France 14(5) R
Netherlands 10(2) 10(3) R				Gambia 14(3)(d) R
New Zealand 10(2)(b) 10(3) R				Germany 14(3)(d) 14(5) R
Norway 10(2)(b) 10(3) R				Guyana 14(3)(d) 14(6) R
Sweden 10(3) R				Iceland 14(7) R
Switzerland 10(2)(b) R				Ireland R
Trinidad & Tobago 10(2)(b) 10(3)R				Italy 14(3) 14(5) R
U K 10(2)(a) 10(2)(b) 10(3) R				Luxembourg 14(3) 14(5) R
U S A 10(2)(b) 10(3) R				Malta 14(2) 14(6) R
U S A 10(2)(a) 10(3) 10(7) D				Monaco 14(5) D
				Netherlands 14(3)(d) 14(5) 14(7) R
				New Zealand 14(6) R
				Norway 14(5) 14(7) R
				Korea 14(5) D
				Sweden 14(7) R
				Switzerland 14(1) 14(3)(d) 14(3)(f) 14(5) R
				Trinidad & Tobago 14(5) 14(6) R
				U K 14(3)(d) R
				U S A 14(4) R 14(3)(b) (d) (e) 14(6) D
				Venezuela 14(3)(d) R

Article 15	*Article 18*	*Article 19*	*Article 20*	*Article 21*	*Article 22*	*Article 23*	*Article 24*
Argentina R	Mexico D	Austria R	Australia R	Austria R	Austria R	Belgium 23(2) R	U K 24(3) R
Germany 15(1) R		Belgium R	Belgium 20(1) R	Belgium R	Belgium R	Israel R	
Italy 15(1) R		France R	Denmark 20(1) R	France R	France R	Kuwait R	
Trinidad & Tobago 15(1) R		Germany R	Egypt 20(1) R	Germany R	Germany R	U K 23(3) 23(4) R	
U S A 15(1) R		Ireland 19(2) R	Finland 20(1) R	Monaco D	Malta R		
		Italy 19(3) R	France D	Trinidad & Tobago R	Monaco D		
		Luxembourg 19(2) R	Iceland 20(1) R		New Zealand R		
		Malta R	Ireland 20(1) R		Korea D		
		Monaco D	Luxembourg 20(1) R				
		Netherlands 19(2) R	Malta R				
		U S A 19(3) D	Netherlands 20(1) R				
			Norway 20(1) R				
			Sweden 20(1) R				
			Switzerland 20(1) R				
			Thailand 20(1) D				
			U K R				
			U S A R				

Article 25	*Article 26*	*Article 27*	*Article 47*	*Article 48*
Kuwait 25(b) R	Austria R	France R	U S A D	Guinea 48(1) R
Mexico 25(b) R	Monaco R			Romania 18(1) D
Monaco R	Switzerland R			
Switzerland 25(b) R	Trinidad & Tobago R			
U K 25(b) 25(c) R	U S A D			

Note: D, R are used to denote Declaration, Reservation respectively


Optional Protocol to the International Covenant on Civil and Political Rights
Reserving Countries
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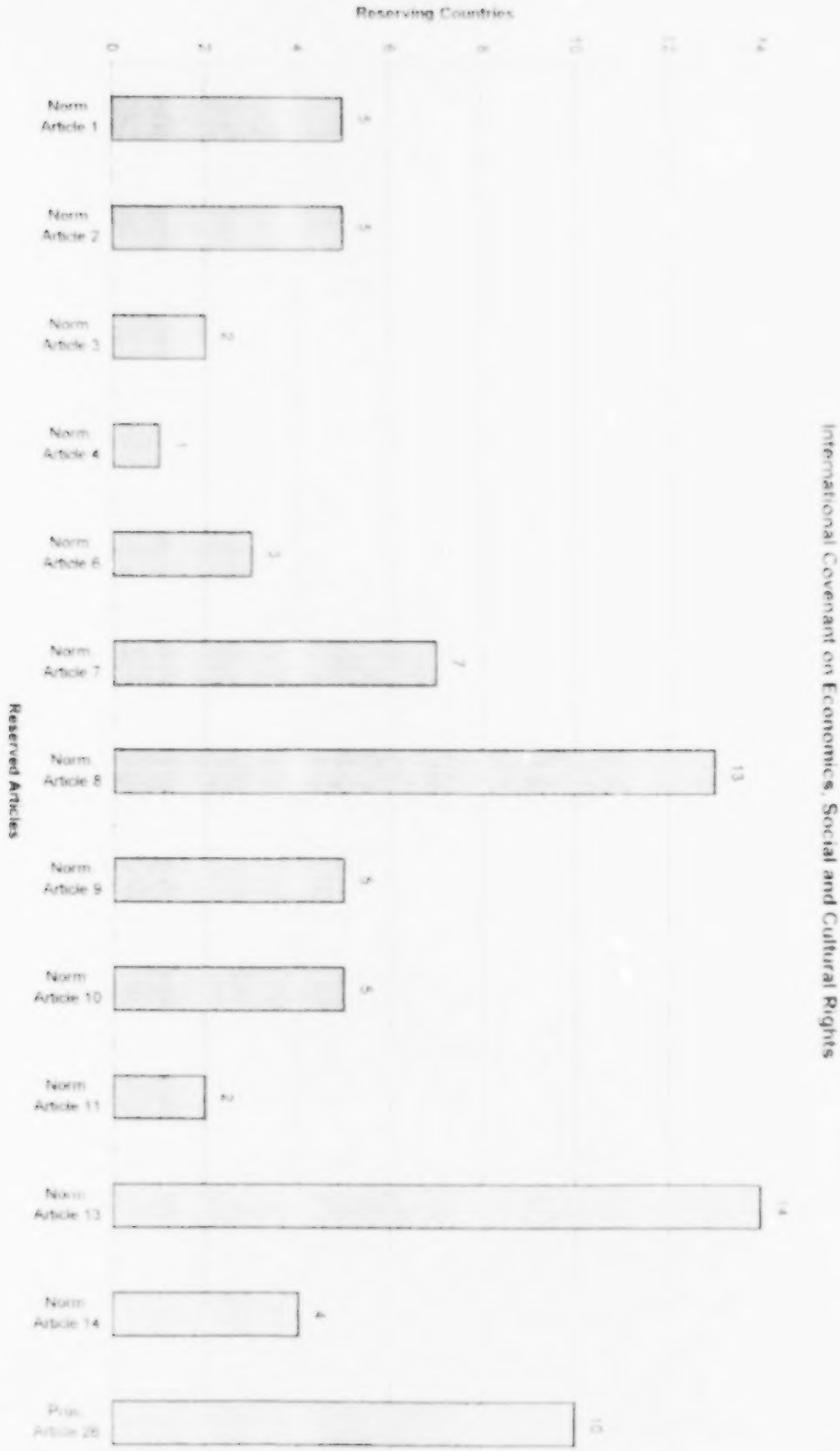
Proc Article 1
Proc Article 5(2)(a)
Norm Article 7
Proc Article 9(2)
Proc Article 14(3)(d)
Reserved Articles

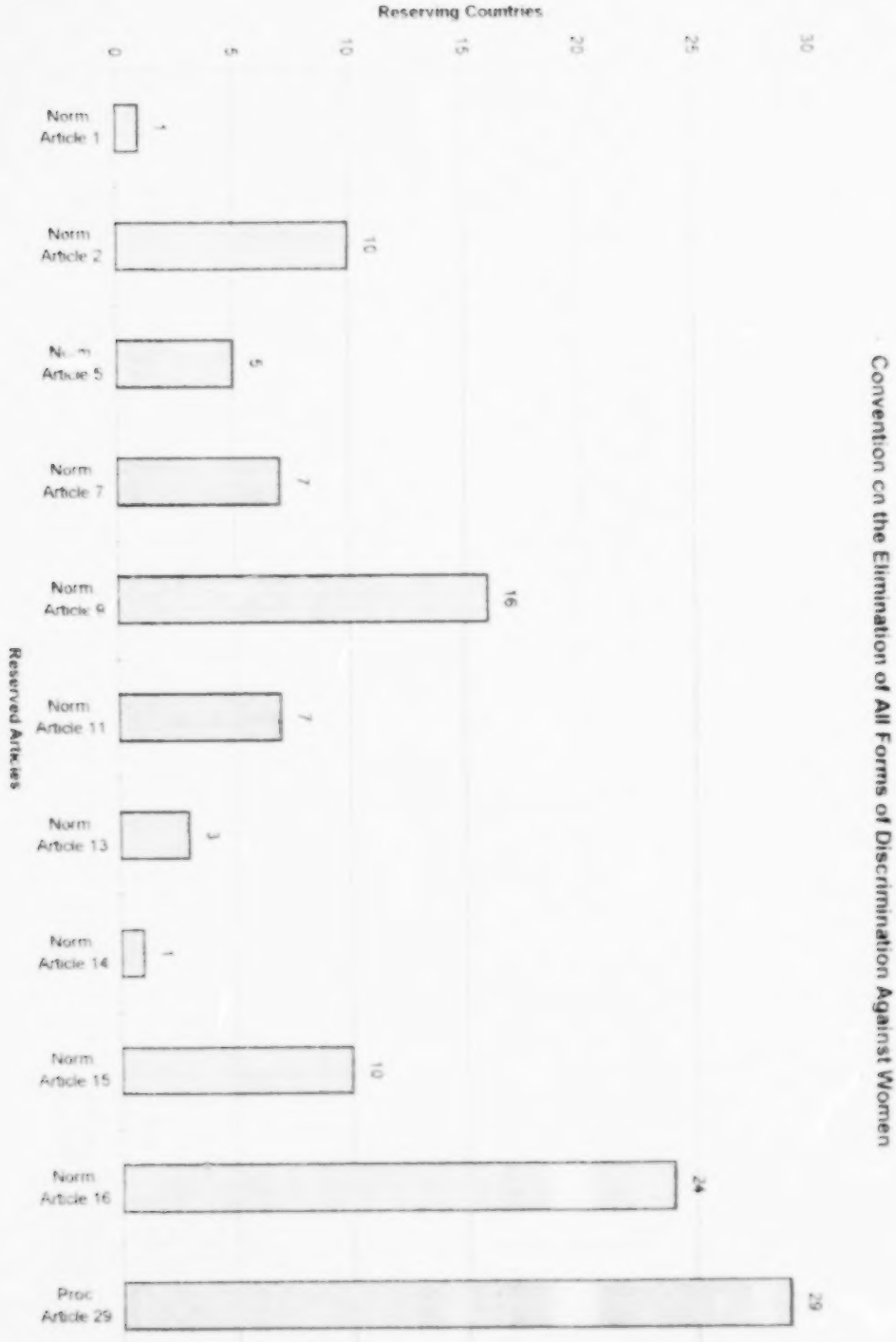
Optional Protocol to the International Covenant on Civil and Political Rights

Article 1	*Article 5(2)(a)*	*Article 7*	*Article 9(2)*	*Article 14(3)(d)*
Croatia D	Austria R	France D	El Salvador R	Venezuela R
France D	Chile D			
Malta D	Croatia D			
Russia Feder D	Denmark R			
Slovenia D	France R			
Sri Lanka D	Germany R			
Trinidad & Tobago R	Iceland R			
	Ireland R			
	Italy R			
	Luxembourg D			
	Malta D			
	Norway R			
	Poland R			
	Romania D			
	Slovenia R			
	Spain R			
	Sweden R			
	Uganda R			
	Venezuela R			


Reserving Countries
Reserved Articles
Norm Article 1
Norm Article 2
Norm Article 3
Norm Article 4
Norm Article 6
Norm Article 7
Norm Article 8
13
Norm Article 9
Norm Article 10
Norm Article 11
Norm Article 13
Norm Article 14
Prot. Article 26
International Covenant on Economics, Social and Cultural Rights

Article 1	*Article 2*	*Article 3*	*Article 4*	*Article 6*	*Article 7*	*Article 8*	*Article 9*	*Article 10*
Algeria 1(3) D	Bangladesh D	Bangladesh R	India R	France D	Bangladesh R	Algeria D	France D	Bangladesh D
Bangladesh D	Belgium 2(2), (3) R	Kuwait R		Monaco D	Barbados 7(1)(a) R	Bangladesh R	Japan R	Barbados 10(2) R
Guinea 1(3) D	Ireland 2(2) R			U.K. R	Denmark 7(d) R	France R	Kuwait R	Kenya 10(2) R
Romania 1(3)D	Kuwait 2(2) R				India 7(C) R	India R	Monaco D	New Zealand 10(2) R
India D	Monaco 2(2) D				Japan 7(d) R	Japan 8(1)(d) R	U.K. R	U.K. 10(1) R
					Sweden 7(d) R	Kuwait 8(1)(d) R		
					U.K. 7(i)(a) R	Mexico D		
						Monaco 8(1)(a), (b), (c) 8(2) R		
						Netherlands 8(1)(d) R		
						New Zealand R		
						Norway 8(1)(d) R		
						Trinidad & Tobago 8(1)(d) 8(2) R		
						U.K. 8(1)(b) R		

Article 11	*Article 13*	*Article 14*	*Article 26*
France D	Algeria 13(3), 13(4) R	Algeria D	Afghanistan 26(1), 26(3) D
Monaco D	Bangladesh D	Guinea D	Bulgaria 26(1), 26(3) R
	Barbados 13(2)(a) R	Romania D	Guinea 26(1) D
	China 13(3), 13(4) R	U.K. R	Hungary 26(1), 26(3) D
	Congo 13(3), (4) R		Mongolia 26(1) D
	France D		Romania 26(1) D
	Ireland 13(2)(a) R		Russia Feder. 26(1) D
	Japan 13(2)(b), (c) R		Syria D
	Madagascar 13(2) R		Ukraine 26(1) D
	Malta R		Vietnam 26(1) D
	Monaco D		
	Rwanda R		
	U.K. 13(2)(a) R		
	Zambia 13(2)(a) R		


Convention on the Elimination of All Forms of Discrimination Against Women
Reserving Countries
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Reserved Articles
Norm Article 1
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Norm Article 2
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Norm Article 5
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Norm Article 7
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Norm Article 9
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Norm Article 11
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Norm Article 13
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Norm Article 14
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Norm Article 15
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Norm Article 16
24
Proc Article 29
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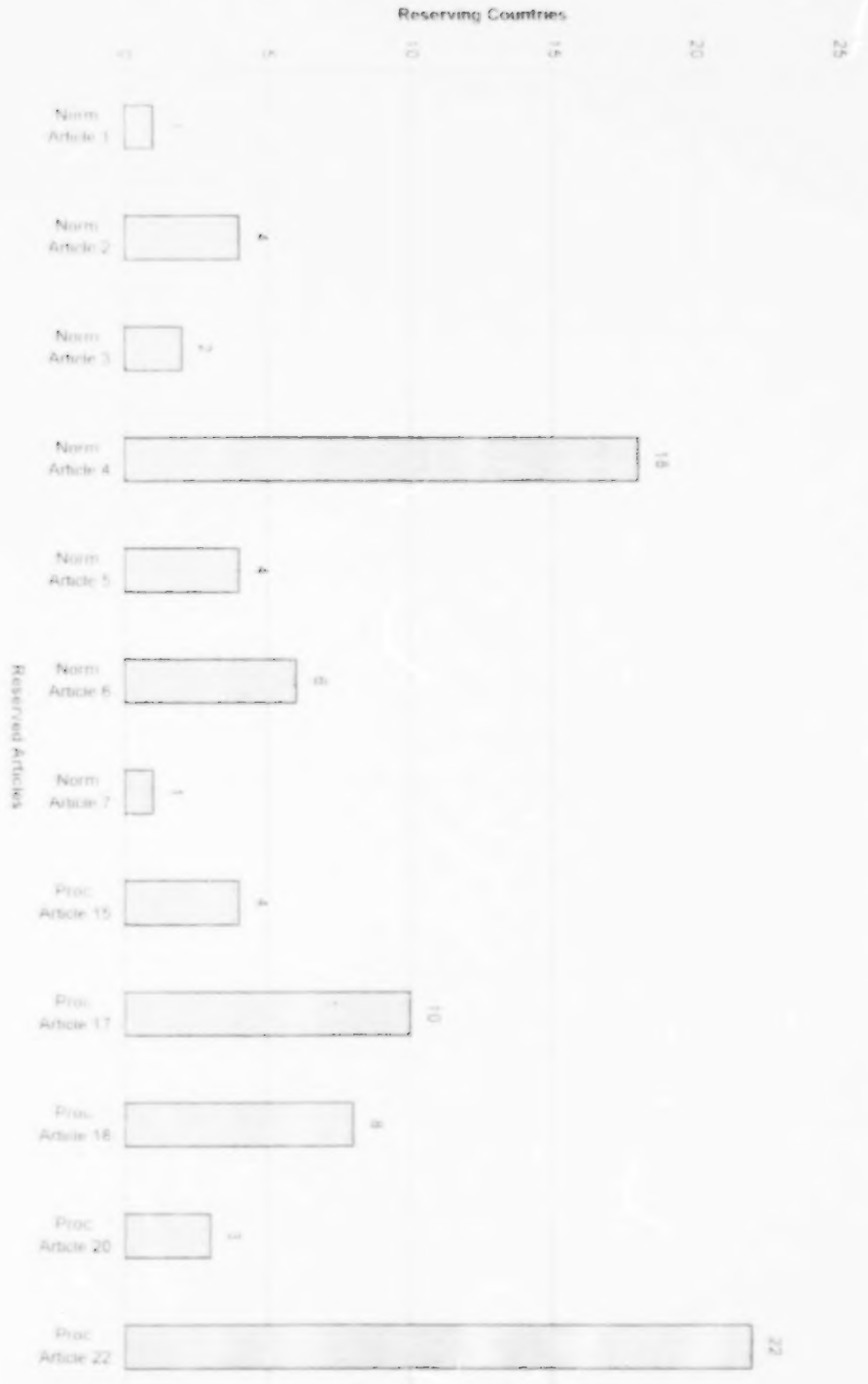
Convention on the Elimination of All Forms of Discrimination Against Women

Article 1	*Article 2*	*Article 5*	*Article 7*	*Article 9*	*Article 11*	*Article 13*
Liechtenstein R	Algeria R	Fiji 5(a)R	Austria 7(b)R	Algeria 9(2) R	Australia 11(2) R	Ireland 13(a) (b)&(c) R
	Bahamas 2(a)R	France 5(b)R	Germany 7(b)R	Bahamas 9(2) R	Austria R	Malta R
	Bangladesh R	India 5(a)D	Israel 7(b)R	Cyprus 9(2) R	Ireland 11 (b) (c)&(d) R	U.K. R
	Egypt R	Malaysia 5(a)R	Kuwait 7(a)	Egypt 9(2) R	Malta R	
	Iraq 2(f)&(g)R	Cook Islands 5(f)R	Luxembourg R	Fiji R	New Zealand 11(2)(b) R	
	Lesotho R		Malaysia 7(b) R	France R	Singapore 11(1) R	
	Libya R		Switzerland 7(b) R	Iraq 9(1) &(2) R	U.K. 11(2) R	
	Morocco R			Jordan 9(2) R		
	Cook Islands 2(f)R			Kuwait 9(2) R		
	Singapore R			Lebanon 9(2) R		
				Malaysia 9(2) R		
				Morocco 9(2) R		
				Korea R		
				Tunisia 9(2) R		
				Turkey 9(1) D		
				U.K. R		

Article 14	*Article 15*	*Article 16*	*Article 29*
France 14(2)(c) R	Algeria 15(4) R	Algeria R	Algeria 29(1) R
	Belgium 15(2)(3) R	Bahamas 16(h) R	Argentina 29(1) R
	Ireland 15(3) R	Bangladesh 16(1)(c) R	Bahamas 29(1) R
	Jordan 15(4) R	Egypt R	Brazil 29(1) R
	Malta R	France 16)(1)(d)&(g) R	China 29(1) R
	Morocco 15(4) R	India 16(1)&(2) D	Cuba 29(1) R
	Switzerland 15(2) R	Iraq R	Egypt 29(2) R
	Tunisia 15(4) R	Ireland 16(1)(d)&(f) R	El Salvador 29(1) R
	Turkey 15(2)&(4) R	Israel R	Ethiopia 29(1) R
	U.K. 15(3)&(4) R	Jordan 16(1)(c)&(d)&(g) R	France 29(2) R
		Kuwait 16(1) R	India 29(1) R
		Lebanon 16(1)(c),(d),(f),(g) R	Indonesia 29(1) R
		Libya 16(c),(d) R	Iraq 29(1) R
		Luxembourg 16(1)(g) R	Israel 29(1) R
		Malaysia 16(1)(a)&16(2) R	Jamaica 29(1) R
		Malta 16(1)(e) R	Kuwait 29(1) R
		Morocco R	Lebanon 29(1)R
		Korea 16(1)(g) R	Mauritius 29(2) R
		Singapore R	Morocco R
		Switzerland 16)(1)(g)&(h) R	Myanmar R
		Thailand R	Pakistan 29(1) R
		Tunisia 16(c),(d),(f),(g),(h) R	Singapore 29(1)R
		Turkey 16(1)(c),(d),(f),(g) R	Thailand 29(1) R
		U.K. 16(1)(7) R	Trinidad & Tobago 29(1) R
			Tunisia 29(1) R
			Turkey 29(1) R
			Venezuela 29(1) R
			Vietnam 29(1) R
			Yemen 29(1) R


International Convention on the Elimination of All Forms of Racial Discrimination
Reserving Countries
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Reserved Articles
Norm Article 1
Norm Article 2
Norm Article 3
Norm Article 4
Norm Article 5
Norm Article 6
Norm Article 7
Proc Article 15
Proc Article 17
Proc Article 18
Proc Article 20
Proc Article 22
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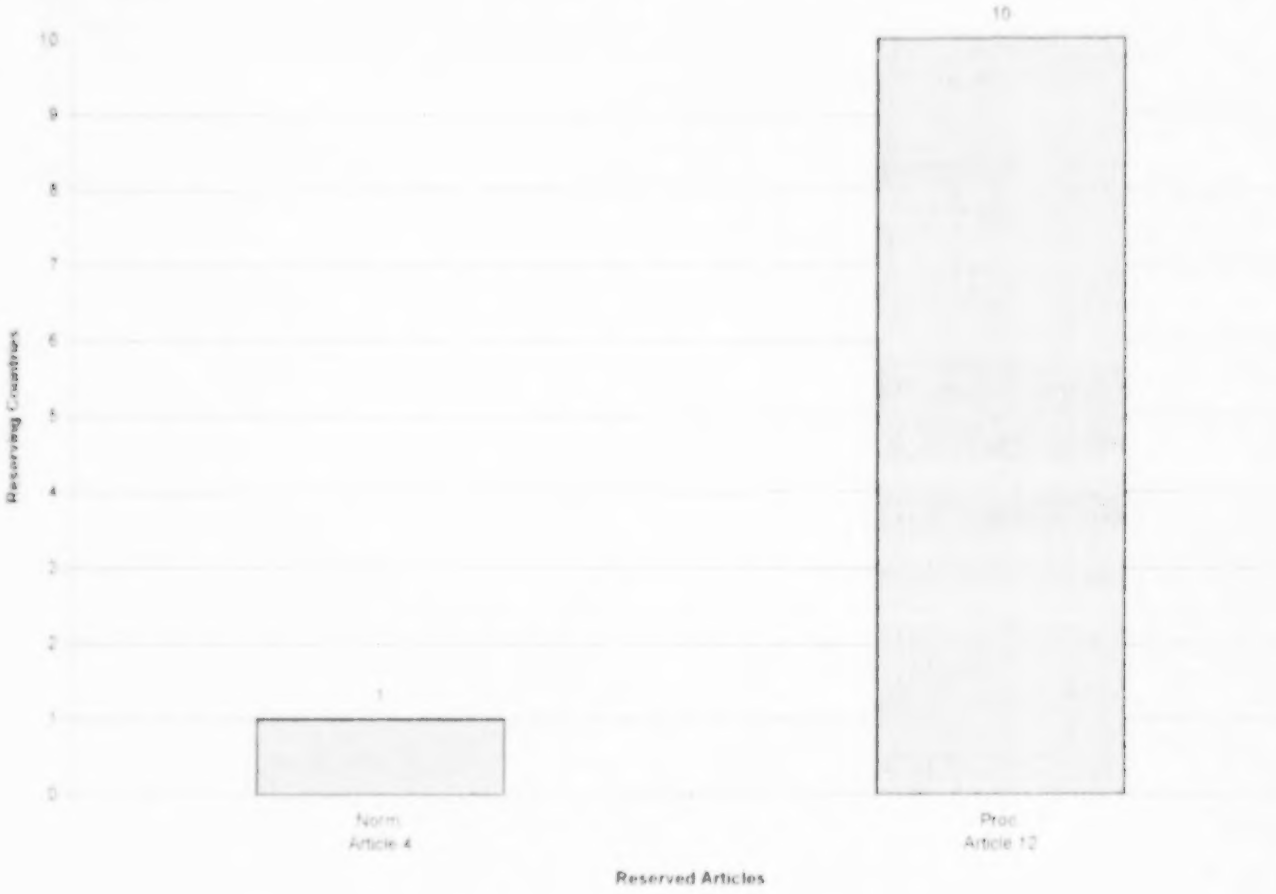
International Convention on the Elimination of all Forms of Racial Discrimination

Article 1	*Article 2*	*Article 3*	*Article 4*	*Article 5*	*Article 6*
U K 1(1) R	Fiji R	Fiji R	Antigua & Barbuda 4(a),(b),(c) D	Fiji 5(c),5(d)(v),5(e)(v)R	Fiji D
	Monaco 2(1) R	U S A R	Australia D	Tonga 5(d)(v) R	France D
	Switzerland 2(1)(a) R		Austria 4(a),(b),(c) D	U K 5(c) R	Italy D
	U S A 2(1),2(1)(c),2(1)(d) R		Bahamas 4(a),(b),(c) D	U S A R	Malta R
			Barbados 4(a),(b),(c) R		Tonga R
			Belgium 4(a),(b),(c) R		U K D
			Fiji 4(a),(b),(c) D		
			France D		
			Italy 4(a),(b),(c) D		
			Japan 4(a),(b),(c) R		
			Malta 4(a),(b),(c) R		
			Monaco R		
			Nepal R		
			Papua New Guinea 4(a),(b),(c) R		
			Switzerland R		
			Tonga 4(a),(b),(c) R		
			U K 4(a),(b),(c) D		
			U S A R		

Article 7	*Article 15*	*Article 17*	*Article 18*	*Article 20*	*Article 22*
U S A R	Fiji D	Afghanistan D	Afghanistan D	Fiji R	Afghanistan R
	France D	Belarus 17(1) R	Bulgaria 18(1) R	Tonga R	Bahrain R
	Tonga D	Bulgaria 17(1) R	Hungary 18(1) D	U K D	China R
	U K D	Hungary 17(1) D	Poland 18(1) R		Cuba R
		Poland 17(1) R	Romania D		Egypt R
		Romania D	Russian Fed D		India R
		Russian Fed D	Vietnam 18(1) D		Iraq R
		Ukraine 17(1) D	Yemen 18(1) D		Israel R
		Vietnam 17(1) D			Kuwait R
		Yemen 17(1) D			Lebanon R
					Libyan-Arab-Jamahiriya R
					Madagascar R
					Morocco R
					Mozambique R
					Nepal R
					Rwanda R
					Saudi Arabia R
					Spain R
					Syria R
					U S A R
					Vietnam R
					Yemen R

U K reserves the right not to apply the Convention to Fiji
U K reserves the right not to apply the Convention to Rhodesia
Guyana gives I D for all the provisions of the Convention

International Convention on the Suppression and Punishment of the Crime of Apartheid



International Convention on the Suppression and Punishment of the Crime of Apartheid

Article 4	*Article 12*
Nepal 4(a),(b) R	Argentina R
	Bahrain R
	Egypt 1977 D, 1980 withdrew
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and Protection of Human Rights
Fifty-first session
Item 12 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Reservations to human rights treaties

Working paper submitted by Ms. Françoise Hampson pursuant to Sub-Commission decision 1998/113

Corrigendum

Page 8, first line

(f) should be (c)

Page 11, first line

(g) should be (d)

Page 12, following paragraph 22

(h) should be (e)

Page 13

Heading (f) should be indented and renumbered (i)

Page 14

Headings (g) and (h) should be indented and renumbered (ii) and (iii) respectively

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Fifty-first session
Item 12 of the provisional agenda

REVIEW OF FURTHER DEVELOPMENTS IN FIELDS WITH WHICH THE SUB-COMMISSION HAS BEEN OR MAY BE CONCERNED

Observance of human rights by States which are not parties to United Nations human rights conventions

Working paper submitted by Mr. Vladimir Kartashkin in accordance with Sub-Commission decision 1998/115

[Original: Russian]

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Introduction

1. In its decision 1998/115 of 26 August 1998 the Sub-Commission on Prevention of Discrimination and Protection of Minorities, having discussed the question of the fiftieth anniversary of the Universal Declaration of Human Rights and the encouragement of acceptance of human rights instruments, requested Mr. Vladimir Kartashkin to prepare, without financial implications, a working paper on ways in which the Sub-Commission could examine the observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States not parties to United Nations human rights conventions and to submit it at the fifty-first session of the Sub-Commission. The Sub-Commission also decided to amend the title of the sub-item entitled "Encouragement of universal acceptance of human rights instruments" by adding the words "and observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States which are not parties to United Nations human rights conventions", and to make this an annual sub-item of the agenda.

2. The historic commemoration of the fiftieth anniversary of the Universal Declaration of Human Rights has shown that States must redouble their efforts to implement all the articles of this most important international instrument in full. It is thus entirely appropriate that the Secretary-General and the United Nations High Commissioner for Human Rights should in January 1999 have launched an appeal to all Governments to sign and ratify, within the next five years, the two International Covenants on Human Rights and at least the four principal conventions obliging States to observe the fundamental rights and freedoms proclaimed in the Universal Declaration.

3. It will be necessary, in this connection, to examine briefly the legal force of the Universal Declaration of Human Rights; the obligations of States arising from the Charter of the United Nations and from the Universal Declaration of Human Rights; ways and means of encouraging acceptance of human rights instruments; and machinery to encourage States to observe the human rights and fundamental freedoms contained in the Universal Declaration and to ratify the principal United Nations human rights conventions.

I. LEGAL FORCE OF THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

4. The Universal Declaration, adopted by the General Assembly of the United Nations on 10 December 1948, heralded a new era in the development of relations among States. It was the first instrument in the world to set forth

a list of civil, political, economic, social and cultural rights "as a common standard of achievement for all peoples and all nations". The Universal Declaration was adopted as a resolution of the General Assembly, which under the Charter of the United Nations has the nature of a recommendation. However, when considering the legal force of its provisions, it must be borne in mind that, together with treaties, a significant role in standard-setting in international law is played by custom, which is formed as a result of the international practice of States and gradually becomes accepted by them as a binding legal norm. The 50 years since the adoption of the Universal Declaration have seen the adoption of many international human rights instruments developing the principles and norms contained in the Declaration, and these have gained universal acceptance. Thus, the rights and freedoms proclaimed in the Universal Declaration are now recognized by those taking part in international relations as legally binding customary or treaty norms.

5. Today, the Universal Declaration is one of the main sources of law and serves as a model that is widely employed by many countries for the elaboration of individual provisions of their constitutions and various laws and instruments relating to human rights. As emphasized by one study, "no fewer than 90 national constitutions drawn up since 1948 contain statements of fundamental rights which, where they do not faithfully reproduce the provisions of the Universal Declaration, are at least inspired by it". 1/ The overwhelming majority of the customary norms of international law contained in the Declaration have now become "jus cogens".

6. The generally recognized nature of the principles and norms embodied in the Universal Declaration is sometimes challenged, by making reference to historical, cultural and religious differences in the development of States. Such arguments are occasionally advanced by States not wishing to recognize fundamental rights and freedoms for their citizens. By declaring these rights to be the product of the development of Western civilization, they consequently deny the contribution of all the world's religions and cultures to this process. The rights and freedoms embodied in the Universal Declaration, such as the right to life, liberty and security of person, the prohibition of slavery and torture, the right to freedom of movement, the right to own property, freedom of thought, conscience and religion, the right to freedom of opinion and expression, the right to take part in the government of the State, the right to work and the right to a decent standard of living,

surely cannot be the product of the development of any single culture or religion. The fundamental rights and freedoms set forth in the Universal Declaration and in many international conventions quite clearly emerged and were accepted by the international community as a result of the contribution of most countries of the world, and of various cultures and religions.

7. All the rights embodied in the Declaration are universal, indivisible, interdependent and interrelated. This applies to civil and political as well as to economic, social and cultural rights. It is, of course, impossible to deny the significance of the national, historical, cultural, religious and other particularities of the development of individual countries. However, they are all bound to observe fundamental human rights and freedoms. This understanding was reflected in the Vienna Declaration and Programme of Action adopted by the World Conference on Human Rights, held in Vienna in 1993, which states: "The international community must treat human rights globally in a fair and equal manner, on the same footing, and with the same emphasis. While the significance of national and regional particularities and various historical, cultural and religious backgrounds must be borne in mind, it is the duty of States, regardless of their political, economic and cultural systems, to promote and protect all human rights and fundamental freedoms" (author's emphasis). This universal duty stems primarily from the Charter of the United Nations and from the Universal Declaration of Human Rights.

II. OBLIGATIONS OF STATES ARISING FROM THE CHARTER OF THE UNITED NATIONS AND FROM THE UNIVERSAL DECLARATION OF HUMAN RIGHTS

8. The Charter of the United Nations, as a fundamental international treaty, contains principles and norms which are binding for all States of the world. The Charter was drafted and adopted after a complex diplomatic struggle and search for compromise solutions and a mutually acceptable formulation. The delegations of some countries insisted on the listing of a range of fundamental human rights and freedoms in this document. However, most of the founders of the United Nations felt that a list of such rights, which would be binding for all Member States, should be drawn up later and included in a separate document. As a result of the compromise reached, Article 1, paragraph 3, of the Charter of the United Nations defines one of the Organization's purposes as being "to achieve international cooperation in solving international problems of an economic, social, cultural, or

humanitarian character, and in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language, or religion". However, the Charter does more than simply refer to the promotion and encouragement of respect for human rights and fundamental freedoms. It makes it the duty of States to promote "universal respect for, and observance of, human rights and fundamental freedoms for all without distinction as to race, sex, language, or religion" (Art. 55 (c)). All Member States pledged themselves to take joint and separate action in cooperation with the Organization for the achievement of that purpose (Art. 56).

9. It is now generally recognized that the provisions of the Charter of the United Nations are binding for all States of the world. Moreover, the principle of respect for human rights, as laid down in this universal international treaty, means that States have a duty to ensure fundamental rights and freedoms for all people within their borders and under their jurisdiction, without discrimination of any kind. 2/

10. Once they had adopted the Charter of the United Nations, the Member States proceeded to draft the Universal Declaration of Human Rights. Following lengthy and detailed discussion it was adopted by the Member States. Moreover, not a single State voted against the adoption of the Declaration.

11. Article 1 of this instrument recognizes the natural character of human rights and proclaims that "all human beings are born free and equal in dignity and rights". They are equal from the moment of birth, and thereafter the situation of the individual in society and the concrete realization of rights and freedoms greatly depend on his abilities and work and on the particular socio-economic policy pursued by the State.

12. Natural rights and freedoms must be granted to every individual, regardless of where and in what State he lives. They cannot be defined exclusively by the State. A specific list of these rights was incorporated into the Universal Declaration and then developed in the International Covenants on Human Rights. As a result of the customary and treaty practice of states they have become binding for all countries of the world, and every State must incorporate these rights into its legislation.

13. What fundamental human rights and freedoms embodied in the Declaration have been reaffirmed in the human rights conventions adopted by the United Nations? These rights may be divided into three categories:

(a) Civil rights: the right to life, liberty and security of person; the prohibition of all forms of slavery; the prohibition of torture; rights relating to the administration of justice; the prohibition of arbitrary interference with a person's privacy, family, home or correspondence, or attacks upon his honour and reputation; the right to freedom of movement and residence, including the right to leave any country and to return to one's own country; the right to political asylum; the right to a nationality; rights relating to marriage and the founding of a family; the right to freedom of thought, conscience and religion; the right to freedom of opinion and expression; and the right to freedom of peaceful assembly and of association;

(b) Political rights: the right of everyone to take part in the government of his country, directly or through freely chosen representatives; the right of everyone to equal access to public service in his country; and the right of everyone to take part in periodic and genuine elections which shall be by universal and equal suffrage and shall be held by secret vote or by equivalent free voting procedures;

(c) Economic, social and cultural rights: the right of everyone to work, including free choice of employment, just and favourable conditions of work and protection against unemployment; the right to equal pay for equal work; the right of everyone who works to just and favourable remuneration ensuring an existence worthy of human dignity; the right of everyone to rest and leisure, including reasonable limitation of working hours and periodic holidays with pay; the right of everyone to an adequate standard of living; the right of everyone to social security; the right of everyone to form and join trade unions for the protection of his interests; the right of everyone to education; and the right of everyone freely to participate in the cultural life of a country, to enjoy the benefits of scientific advancement and protection of his moral and material interests resulting from scientific, literary or artistic production.

14. The process of universalization of human rights, begun with the Charter of the United Nations and continued with the Universal Declaration, has led to radical changes in international law. As declared by the States participating in the 1991 Moscow Meeting of the Conference on the Human Dimension of the Conference on Security and Cooperation in Europe (CSCE), human rights are "of direct and legitimate concern to all participating States and do not belong exclusively to the internal affairs of the State concerned". 1/

15. The bounds of States' domestic jurisdiction do not remain unchanged, they are historically mobile. States themselves define such limitations by making particular issues of inter-State relations subject to international legal regulation. Thus, after the adoption and ratification of the Universal Declaration, the Covenants and other international human rights instruments by the overwhelming majority of States Members of the United Nations, it can no longer be held that human rights belong within the internal competence of States. Preventing violations of human rights, whether massive and systematic or individual, is the concern of the international community as a whole.

16. Today, the norms of international law not only oblige States to ensure the fundamental rights and freedoms reaffirmed in international instruments, but also entitle the individual to call upon the State to fulfil its international obligations. Indeed, such claims may be the subject not only of domestic but also of international proceedings, for which provision is made both at the universal level (Human Rights Committee, Committee against Torture, etc.) and in regional forums (European Court of Human Rights, etc.). Moreover, various principal and subsidiary organs of the United Nations, including the Sub-Commission on Prevention of Discrimination and Protection of Minorities, in their meetings regularly consider both massive and individual violations of fundamental human rights and freedoms. All of this demonstrates that human rights have become a matter of international legal regulation and international protection, and the individual is considered to be a subject of international law with a clearly defined legal personality.

III. WAYS AND MEANS OF ENCOURAGING ACCEPTANCE OF HUMAN RIGHTS INSTRUMENTS

17. Today, as already indicated, the overwhelming majority of States have become parties to international human rights instruments. By 22 February 1999, 141 States had acceded to the International Covenant on Economic, Social and Cultural Rights, and 144 to the International Covenant on Civil and Political Rights. A total of 153 States had become parties to the International Convention on the Elimination of All Forms of Racial Discrimination, and 112 to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Only the Convention on the Rights of the Child has been signed and ratified by virtually all countries of the world. These figures demonstrate that quite a number of States have not yet ratified the principal international human rights instruments and thus

have not come under the supervision of United Nations treaty bodies. This situation cannot be regarded as normal, since all States have concrete obligations to observe specific human rights and fundamental freedoms.

18. The Sub-Commission has for a number of years been considering the question of encouraging universal acceptance of human rights instruments. At its thirty-second session, the Sub-Commission adopted resolution 1 B (XXXII) of 5 September 1979 by which it decided to establish each year a sessional working group composed of five of its members representing various geographical regions of the world to consider ways and means of encouraging States to ratify international human rights instruments. That resolution listed the following instruments: the International Covenant on Economic, Social and Cultural Rights, the International Covenant on Civil and Political Rights, the Optional Protocol to the International Covenant on Civil and Political Rights, the International Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Prevention and Punishment of the Crime of Genocide, the International Convention on the Suppression and Punishment of the Crime of Apartheid, the Slavery Convention, the Protocol amending the Slavery Convention signed at Geneva on 25 September 1926, the Supplementary Convention on the Abolition of Slavery, the Slave Trade and the Institutions and Practices similar to Slavery, and such other instruments as might be designated in the future by the Sub-Commission. At its thirty-third session in 1980 the Sub-Commission decided to add the following instruments to that list: the International Convention against the Taking of Hostages of 1979 and the Convention on the Elimination of All Forms of Discrimination against Women of 1979. In 1982 the list was further expanded to include the Convention for the Suppression of the Traffic in Persons and of the Exploitation of the Prostitution of Others (Sub-Commission resolution 1982/3 of 7 September 1982).

19. In the above-mentioned resolution 1 B (XXXII), the Sub-Commission requested the Secretary-General of the United Nations, well before its annual sessions, to write to States which had not yet acceded to the instruments indicated, requesting them to provide information about any circumstances impeding ratification of the international instruments and any particular difficulties in respect of which the United Nations could offer assistance. The resolution invited the sessional working group of the Sub-Commission to examine the replies received from States and, if necessary, to invite their

representatives for discussions with a view to providing further information; and to consider, in appropriate cases, what essential assistance could be provided to States by the United Nations to help them ratify the human rights instruments as speedily as possible. The Sub-Commission decided to consider the report of the sessional working group at its sessions each year.

20. At a number of its annual sessions the working group examined replies received from States, heard clarifications from their representatives and discussed various procedural issues relating to its work (see E/CN.4/Sub.2/1982/1/Add.1; E/CN.4/Sub.2/1983/1/Add.1; E/CN.4/Sub.2/1984/Add.1). In 1984 the Sub-Commission decided to suspend the work of the working group (resolution 1984/36 of 30 August 1984), which did not thereafter resume its activities.

21. Action by the working group proved unsuccessful for a variety of reasons: the failure to elaborate precise and clear rules of procedure defining its methods of work; the sessional and non-continuous nature of its work during sessions of the Sub-Commission, which hampered detailed consideration of matters falling within its sphere of competence; the overburdening of the agenda with discussion of the reasons for non-ratification of many human rights instruments; the unwillingness of some States to cooperate with the working group and transmit information about factors impeding ratification of human rights instruments, and a number of other circumstances. However, the main reason for the lack of success in the work of the working group was that it examined the question of non-ratification of international human rights conventions by the States concerned without any reference to their observance of the fundamental rights and freedoms enshrined in the Universal Declaration and other United Nations instruments.

IV. MECHANISM FOR ENCOURAGING EFFORTS BY STATES TO OBSERVE THE HUMAN RIGHTS AND FUNDAMENTAL FREEDOMS CONTAINED IN THE UNIVERSAL DECLARATION, AND THEIR RATIFICATION OF UNITED NATIONS HUMAN RIGHTS CONVENTIONS

22. The aim of the mechanism described below is to encourage efforts to observe the human rights and fundamental freedoms contained in the Universal Declaration by States which are not parties to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and

Cultural Rights and a number of other conventions that place upon States the obligation to observe the particular rights embodied in the Universal Declaration.

23. In pursuance of this aim, which is exclusively one of providing encouragement, the proposed mechanism will make it possible to define areas in which United Nations assistance, extended primarily through technical cooperation and advisory services, may prove useful for States which are not parties to the main United Nations human rights conventions in applying the principles and norms contained in the Universal Declaration. It will not be a substitute for the existing treaty bodies or in any way interfere in their work. The proposed mechanism will function only in respect of States which are not parties to the United Nations human rights conventions and whose observance of human rights and fundamental freedoms is not monitored by United Nations treaty bodies.

24. In order to create this mechanism the Sub-Commission will need to adopt a resolution on the establishment for three years of an inter-sessional working group composed of at least five of its members serving in a personal capacity. Particular attention should be paid in this regard to equitable geographical distribution and the representation of the principal legal systems.

25. The working group will act on the basis of reports requested from States which are not parties to the International Covenant on Civil and Political Rights or the International Covenant on Economic, Social and Cultural Rights. If a given State is not a party to either Covenant, information will be requested in respect of each of them. Such information should be sought each year in relation to only one of the categories of rights listed in paragraph 13 of this working paper. Information will be requested on civil rights in the first year, on political rights in the second year, and on economic, social and cultural rights in the third year. The State concerned may furthermore be requested to provide information in respect not only of the International Covenants on Human Rights but also of other United Nations conventions governing aspects of the observance of the rights of the individual listed in paragraph 13 of this working paper. Thus, for example, when considering matters relating to the prohibition of slavery or torture, as covered by the International Covenant on Civil and Political Rights, the working group may request information about ratification of the conventions on

slavery, servitude and forced labour or the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as about the observance thereof by the State concerned.

26. The working group should from the very outset confine itself to considering only specific issues relating to the observance by States of the fundamental rights and freedoms proclaimed in the Universal Declaration and reaffirmed in the International Covenants on Human Rights and a number of other strictly defined conventions governing the protection of those same rights. Otherwise, the working group will be unable to cope with the volume of information made available to it.

27. Reporting guidelines should be drawn up in such a way that exhaustive information can be obtained from the States concerned regarding observance of the fundamental human rights and freedoms contained in the Universal Declaration, on progress achieved in this respect, and also about any factors and difficulties affecting the extent to which they are observed. Additional information may be requested where necessary. If, after receiving a reminder, a State does not provide the information requested, the working group may decide to discuss matters relating to observance of fundamental rights and freedoms by that State on the basis of information made available to it by non-governmental organizations and other sources in accordance with the rules of procedure that have been established. Representatives of States and non-governmental organizations may take part in the discussion of the reports, which will be considered in the order of precedence decided by the working group.

28. When discussing country reports, the working group will make recommendations to the States concerned and also set forth views regarding the provision of assistance to them in meeting established or stated needs, including technical cooperation and advisory services, which may contribute to observance of the fundamental human rights and freedoms embodied in the Universal Declaration, as well as ratification of the International Covenants on Human Rights and other relevant United Nations conventions. This work of the working group will contribute to ensuring that, within the next few years, the appeal of the Secretary-General and the High Commissioner for Human Rights will be heeded and many States will sign and ratify the two International Covenants on Human Rights and the principal United Nations conventions in this field.

29. At the very outset the working group should draw up and adopt precise and clear rules of procedure defining its methods of work. Moreover, considering the importance of the matters to be raised for its discussion, which may become one of the main directions of work of the Sub-Commission, the working group should meet each year for at least two weeks well before the start of the Sub-Commission's session. The working group should report annually to the Sub-Commission on its sessional work.

Notes

1/ N. Jayawickrama, "Hong Kong and the International Protection of Human Rights", in Human Rights in Hong Kong (Hong Kong-New York, 1992), p. 160.

2/ See, for example, H. Lauterpacht, International Law and Human Rights (London, 1950), pp. 147-149; M. Ganji, International Protection of Human Rights (Geneva-Paris, 1962), pp. 116-119.

3/ Document of the Moscow Meeting of the Conference on the Human Dimension of the CSCE/International Cooperation in the Field of Human Rights. Documents and Proceedings (Moscow, 1993).

Annex

DRAFT RESOLUTION OF THE SUB-COMMISSION ON PREVENTION OF DISCRIMINATION AND PROTECTION OF MINORITIES

Observance of the human rights and fundamental freedoms contained in the Universal Declaration of Human Rights by States which are not parties to United Nations human rights conventions

The Sub-Commission on Prevention of Discrimination and Protection of Minorities,

Considering that, in accordance with the Charter of the United Nations, the observance of human rights and fundamental freedoms is of major importance in ensuring universal and lasting peace,

Considering also that the United Nations under its Charter has the task of promoting and encouraging respect for human rights and fundamental freedoms for all without distinction as to race, sex, language or religion and is to be a centre for harmonizing the actions of nations in the attainment of this end,

Considering further that the States Members of the United Nations, by adopting the Universal Declaration of Human Rights, reaffirmed their commitment to the observance of fundamental human rights, their faith in the dignity and worth of the human person and in the equal rights of men and women, and their determination to promote, in cooperation with the United Nations, the universal observance of civil and political as well as economic, social and cultural rights,

Considering that not all States are as yet parties to the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, which have embodied in treaty form the principles and norms contained in the Universal Declaration,

Considering also that States which are not parties to the International Covenants on Human Rights and other United Nations conventions in this field do not report to the United Nations on their observance of fundamental human rights and freedoms,

Mindful that States Members of the United Nations, even if they have not ratified the International Covenants on Human Rights and other United Nations conventions in this field, have obligations arising from the Charter of the United Nations and from the Universal Declaration to observe fundamental human rights and freedoms,

Desiring to provide States which have not ratified the International Covenants on Human Rights and other United Nations conventions in this

field with assistance in the promotion and observance of the fundamental human rights and freedoms proclaimed in the Universal Declaration,

1. Decides to establish, for a period of three years, an inter-sessional working group of the Sub-Commission composed of five of its members serving in a personal capacity, having due regard for equitable geographical distribution and the representation of the principal legal systems;

2. Invites the working group to request States which are not parties to the International Covenant on Economic, Social and Cultural Rights and the International Covenant on Civil and Political Rights to submit reports on the observance of the Universal Declaration of Human Rights, legislative and other measures taken for its implementation, and progress achieved in this respect, as well as any factors and difficulties affecting the extent to which the human rights and fundamental freedoms contained in the Declaration are ensured;

3. Also invites the working group to adopt its own rules of procedure for the consideration of such reports and other information received from States and from non-governmental organizations;

4. Further invites the working group to make recommendations to States and also to set forth its views regarding the provision of assistance to them in meeting established or stated needs, including technical cooperation and advisory services, which may contribute to the observance of the fundamental rights and freedoms enshrined in the Universal Declaration, as well as the ratification and implementation of the International Covenants on Human Rights and other United Nations conventions in this field;

5. Invites the working group to submit annual reports to the Sub-Commission containing its recommendations and the views of States regarding the provision of assistance in meeting their established or stated needs which may contribute to the observance of the fundamental human rights and freedoms enshrined in the Universal Declaration, as well as the ratification of the International Covenants on Human Rights and other relevant United Nations conventions in this field;

6. Decides to convene sessions of the working group each year for a period of two weeks well before the regular session of the Sub-Commission;

7. Also decides to include this item in the annual agenda of the Sub-Commission as an important matter taking priority.